(18,608.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 88.

THE BRUNSWICK TERMINAL COMPANY ET AL.

vs.

THE NATIONAL BANK OF BALTIMORE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 29, 1903.

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a *Certified Record Transmitted to the Supreme Court of the United States in Obedience to the Writ of Certiorari of that Court.*

Transcript of Record.

United States Circuit Court of Appeals, Fourth Circuit.

THE BRUNSWICK TERMINAL COMPANY, a Corporation, *et al.*, Appellants,
versus
THE NATIONAL BANK OF BALTIMORE, Appellee. } No. 439.

Appeal from the circuit court of the United States for the district of Maryland.

Record filed January 23rd, 1902.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *District of Maryland*, } *To-wit:*

At a circuit court of the United States for the fourth circuit, in and for the district of Maryland, begun and held at the courthouse, in the city of Baltimore, on the first Monday of November, being the fourth day of the same month, in the year of our Lord one thousand, nine hundred and one.

Present: The Honorable Thomas J. Morris, judge of the Maryland district; John C. Rose, Esq., attorney; William F. Airey, Esq., marshal; James W. Chew, clerk.

Among other were the following proceedings, to-wit:

THE BRUNSWICK TERMINAL COMPANY, a Corporation; The Seaboard National Bank, a Corporation; Maria L. Stacy, a Widow; J. J. Wimberly, W. H. Berrie, W. E. Allison, and Others, Complainants,
versus
THE NATIONAL BANK OF BALTIMORE, Respondent.
} In Equity.

Bill of Complaint.

Filed 14th January, 1898.

In the United States Circuit Court for the Fourth Circuit, District of Maryland, Baltimore.

THE BRUNSWICK TERMINAL COMPANY and Others, Complainants,
vs.
THE NATIONAL BANK OF BALTIMORE, Respondent.

To the honorable the judges of said court, sitting in equity:

2 Your complainant, The Brunswick Terminal Company, a corporation duly created, organized, and existing under the laws of the State of Georgia, the Seaboard National Bank, a corporation duly created, organized and existing under and by virtue of the laws of the United States, Maria L. Stacy, a widow, J. J. Wimberly and W. H. Berrie, all residents and citizens of the State of Georgia, bring this their bill of complaint on behalf of themselves and all other creditors of the Brunswick State bank, a corporation which was created, organized and existed up to the 25th day of May, 1893, under the laws of the State of Georgia, with its place of citizenship and residence in said State, who may think proper to come into this suit and contribute their proper proportion of the costs thereof, against the National Bank of Baltimore, a corporation duly created, organized and existing under and by virtue of the laws of the United States, with its place of citizenship and residence in the city of Baltimore, in the State of Maryland; and thereupon your complainants, complaining, say:

First. That on or about the 25th day of August, 1890, the said respondent became a stockholder of record in the said Brunswick State bank, a corporation created, organized and existing under the laws of the State of Georgia, engaged in a general banking business in said State, with its chief office and place of business at Brunswick, Glynn county, in said State, by acquiring from one Edward F. Marsh, and becoming the owner and holder of, one hundred and ten (110) shares of the capital stock of said Brunswick State bank, of the par value of one hundred dollars (100.00) per share, evidenced by stock certificate number fifty-five (No. 55).

Second. That afterwards, to-wit, on the 30th day of October, 1890, the said respondent attempted to transfer its said stock to one C. B. Lloyd, of Brunswick, Glynn county, Georgia; that said alleged transfer of stock was not made in conformity with the laws of the State of Georgia governing such transactions; that the said respondent failed to give any notice by publication or otherwise, or to in any manner or form comply with the requirements of said law; that your complainants had no knowledge whatsoever of such alleged transfer until the failure and closing of said Brunswick State bank on the 25th day of May, 1893; and that your complainants are advised, and so believe and charge, that said attempted transfer was inoperative and void in-so-far as it undert[illegible]s to relieve the said respondent of its liability as a stockholder to them.

3 Third. That the said Brunswick State bank and the said Edward S. Marsh are utterly and notoriously insolvent, and the said C. B. Lloyd died, insolvent, in the year 1893.

Fourth. That the liability of the stockholders of the said Brunswick State bank to the creditors thereof, created by its charter, found in the Laws of Georgia of 1889, page 522, is as follows: "Section 9. Be it and it is hereby further enacted, that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders in addition thereto, shall be individually liable, equally and ratably, and not one for another, as sureties to the creditors of such corporation, for all contracts and debts of said corporation, to the extent of the amount of their stock therein, at the par value thereof, respectively, at the time the debt was created, in addition to the amount invested, in such shares;" that said liability thus created is, under the laws of the State of Georgia a, direct one of the stockholders to the creditors, accruing immediately upon the cessation of business, the insolvency of, or the appointment of a receiver for said Brunswick State bank, and is a debt in the nature of a specialty and is not barred by the expiration of less than twenty years, and imposes upon each stockholder a liability for his *pro rata* share of all the debts of the said bank, whether contracted before or after he became a stockholder and until the stockholder shall comply with the statutory provision set forth in the next section, provided such liability shall in no case exceed the par value of the shares held by him.

Fifth. Your complainants aver and charge that the law of the State of Georgia governing the liability of the respondent to the creditors of the said Brunswick State bank, found in the Code of Georgia, 1882, section 1496, is as follows, to-wit: "When a stockholder in any bank or any other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability, unless he receives a written notice from a creditor, within six months, after such transfer, of his intention to hold him liable, provided he shall give notice once a month, for six months, of such transfer, immediately thereafter, in two newspapers in and nearest the place where such institution shall keep its principal office;" and

that under the law of the State of Georgia the said respondent by its failure to comply with the above provision still remains a stockholder of said Brunswick State bank, as regards the creditors thereof, and is, therefore, liable to said creditors to the amount of the par value of its stock in said bank as above set forth, with in-
4 terest at the rate of six per cent. per annum from the 25th day of May, 1893, the date of suspension of business by said bank.

Sixth. That said Brunswick State bank was engaged in a general banking business in said city of Brunswick, Georgia, at the time the respondent acquired said one hundred and ten (110) shares of stock, and continued in said business until the 25th day of May, 1893, when it suspended, closed its doors, and refused to pay its creditors, or any of them; that said bank has never since resumed business, and its indebtedness herein set out, to your complainants, was created after the said respondent acquired its said shares of stock.

Seventh. That on or about the 30th day of May, 1893, William M. Wiggins and others, and E. Shryver and others, alleging themselves to be creditors of said Brunswick State bank, filed their petitions in the clerk's office of the superior court of Glynn county, in the State of Georgia, against said bank, alleging its insolvency and praying for the appointment of a receiver to take possession of and administer all its assets; that subsequently the court passed a decree finding and declaring said bank to be totally insolvent, and appointing a permanent receiver to take charge of and administer the assets of said bank as prayed; that the State of Georgia in its sovereign capacity was, under said petitions, a preferred creditor; that said Glynn county was also under said petitions a preferred creditor; and that the payments made to the said State of Georgia, and Glynn county, together with the costs of the suit, exhausted all the assets of said bank, leaving nothing for your complainants and the other general creditors of said bank.

Eighth. That at the date of suspension of business by said Brunswick State bank, on the 25th day of May, 1893, the total indebtedness of said bank, due and unpaid, was one hundred and thirty-seven thousand, five hundred and twenty-seven dollars and forty-eight cents ($137,527.48), and its present indebtedness, exclusive of interest due and unpaid, exceeds the sum of fifty thousand dollars ($50,000.00), for the payment of which, or any part thereof, the said bank has no assets or properties whatever; that the said bank issued, under authority of its charter, five hundred (500) shares of stock of the par value of one hundred dollars ($100.00) per share, making a total issue of stock of fifty thousand dollars ($50,000.00); wherefore, the outstanding indebtedness of said bank, exclusive of interest, over and above all its assets and properties, being in
5 excess of the par value of the total issue of its capital stock, each and all the stockholders of said bank, including the said National Bank of Baltimore, respondent, upon its insolvency, cess-

tion of business, and the appointment of a receiver to take charge of and administer its assets as above set forth, became at once and are, under the law of the State of Georgia, individually liable to the creditors of said bank, including your complainants, for the full par value of the stock held by them, with interest from the date of the accruing of such liability.

Ninth. Your complainants further aver and charge that upon the cessation of business of said Brunswick State bank, on the 25th day of May, 1893, the said bank was and is now indebted to them and each of them, exclusive of interest, as follows, to-wit:

To the said Brunswick Terminal Company.....	$6,155.07
To the said Seaboard national bank.....	2,750.00
To the said Maria L. Stacy, a widow.....	4,047.27
To the said J. J. Wimberly.....	3,322.80
To the said W. H. Berrie	2,494.59

All of which said debts accrued during the year 1892 & '3; none of which said debts, nor any part of any of them, have been paid, but are still due and owing, and are each and all without security or priority; that said debts are upon extended accounts with said Brunswick State bank, running through considerable periods of time, and are balances due them as depositors and otherwise upon such extended accounts, and that to attach copies of each of said accounts hereto would make this bill unnecessarily voluminous, and your complainants therefore pray leave to omit the same, and to be allowed to make proof thereof from the books of said Brunswick State bank, and other proper evidence, under the direction of this honorable court, by such method as it may direct.

To the end, therefore, that your complainants may have that relief which they can only obtain in a court of equity, and that the said respondent may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainants; that an account may be taken by and under the direction and decree of this honorable court; that a master may be appointed to take testimony in this cause; that all other creditors of said Brunswick State bank not herein made parties complainants may have leave to intervene in said cause, and that the respondent

6 *made be* decreed to pay unto your complainants, and such other creditors as shall intervene and prove their claim in this cause, the sum of eleven thousand dollars ($11,000.00), together with interest at the rate of six per cent. per annum from the 25th day of May, 1893, together with the costs of this proceeding; that your complainants' counsel be allowed a reasonable and proper fee for instituting and conducting this suit, and that your complainants may have such other and further relief in the premises as the nature and circumstances of this case may require and to your honors shall seem meet.

May it please your honors to grant unto your complainants a writ of subpœna, to be directed to the said The National Bank of Balti-

more, respondent, a corporation, residing in the city of Baltimore, State of Maryland, thereby commanding it at a certain time, and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the premises.

And, as in duty, &c.

GOODYEAR & KAY,
WILLIAMS & WILLIAMS,
Solicitors for Complainants.

Subpœna.

THE UNITED STATES OF AMERICA, *District of Maryland*, } *To-wit:*

To The National Bank of Baltimore, Greeting:

Seal of Circuit Court of U. S., Dist. of Md.

You are hereby command- that, all excuses and delays set aside, you be and appear at the clerk's office of the circuit court of the United States for the fourth circuit in and for the district of Maryland, on the first Monday in February next, to answer unto the bill of complaint of the Brunswick Terminal Company, a corporation organized under the laws of the State of Georgia; the Seaboard National Bank, a corporation organized and existing under and by virtue of the laws of the United States; Maria L. Stacy, a widow; J. J. Wimberly and W. H. Berrie, all residents and citizens of the State of Georgia, in said court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the 14th day of January, in the year of our Lord, 1898.

Issued fourteenth day of January, 1898.

JAS. W. CHEW, *Clerk.*

7 MEMORANDUM.—The defendant is required to enter its appearance in the suit in the clerk's office on or before the first Monday of February next, otherwise the bill may be taken *pro confesso.*

Marshal's Return.

Summoned the National Bank of Baltimore by service on Christian Devries, its president, and copy left with him this 15th day of January, 1898, at 11.10 a. m.

CHAS. H. EVANS,
U. S. Marshal.

Order for Appearance.

Filed 7th February, 1898.

In the United States Circuit Court for the Fourth Circuit, District of Maryland, Baltimore.

THE BRUNSWICK TERMINAL COMPANY and Others, Complainants, vs. THE NATIONAL BANK OF BALTIMORE, Respondent. } In Equity.

James W. Chew, Esq., clerk of said court:

Enter our appearance for the respondent, The National Bank of Baltimore.

JAMES L. McLANE,
ALLAN McLANE,
Sol'rs for Nat'l Bank of Baltimore.

8 *Answer of National Bank of Baltimore.*

Filed 5th March, 1898.

In the Circuit Court of the United States in and for the Fourth Circuit and District of Maryland, Sitting in Equity.

THE BRUNSWICK TERMINAL COMPANY and Others, Plaintiffs, vs. THE NATIONAL BANK OF BALTIMORE, Defendant. }

The answer of the National Bank of Baltimore, a body corporate, under its corporate seal, to the bill of complaint of the Brunswick Terminal Company, the Seaboard National Bank, Maria L. Stacy, J. J. Wimberly, and W. H. Berrie against it in this honorable court exhibited.

This defendant, The National Bank of Baltimore, reserving to itself all and all manner of exception to the manifold inaccuracies, insufficiencies and imperfections of the said bill of complaint, nevertheless, for answer thereto, or to so much thereof as it is necessary to make answer unto, traverse or deny, answering saith:

1. This defendant admits that it is a body corporate, incorporated under the laws of the United States, and having its principal office and place of business at the city of Baltimore in the State of Maryland, and subject to be treated as a citizen and resident of the said State, for the purposes of this proceeding.

2. It admits that the Brunswick State bank was and is a corporation, created, organized and existing under the laws of Georgia, engaged in the banking business, with its chief office and place of business at Brunswick, Glynn county, in the State of Georgia.

3. It denies that it became a stockholder of the said Brunswick State bank, as stated in the said bill, and it saith that on the fifth day of August, 1890, it discounted at the instance of W. A. Cunningham the promissory note of C. B. Lloyd and F. E. Cunningham for the sum of $10,000.00 due October 26–29th, 1890, endorsed by Lloyd & Adams and W. A. Cunningham, for the security for the payment of which it received from the said C. B. Lloyd a certificate for one hundred shares of the capital stock of said bank,
9 standing in the name of E. S. Marsh, and duly assigned by him for transfer, and a certificate for ten shares of the capital stock of said bank, standing in the name of Edward C. Thompson, and duly assigned by him for transfer, and, desiring only to avail itself of the security of said collateral stock, this defendant, on or about the 25th day of August, 1890, caused the said certificates of stock to be transferred into its own name on the books of said Brunswick State bank, and on the 30th day of October following, the said note having been paid to it, and the said C. B. Lloyd having become entitled to the return of the said collateral, it returned the stock to him, and caused it to be transferred on the said books into the name of the said Lloyd.

And this defendant avers that it did not, by said transaction, come under the obligation of a stockholder in the said Brunswick State bank, and this respondent denies that it was in any way bound to give the notice of the said transfer, as stated in the second paragraph of the bill, in order to prevent liability attaching to it.

4. This defendant saith that it has no knowlege whether the plaintiffs are lawful creditors of the said bank, and it doth not admit that they, or any of them, are, and it requires full proof of the said claim.

5. It has no knowledge of the alleged failure, or insolvency of the said Brunswick State bank, or of the insolvency of the said Marsh and said Lloyd, or of the death of the latter, and it makes no admission with regard to any of the averments of the third and sixth paragraphs of the bill.

6. It has not in its possession a copy of the charter of said Brunswick State bank and of the Code of Georgia, and while it believes that the extracts alleged to be taken therefrom, set forth in the fourth and fifth paragraphs of the bill, are correctly stated, nevertheless, for greater certainty, this defendant prays that reference may be had to the law of the State of Georgia, relating thereto, so far as the same may be held to be applicable.

7. It denies the conclusions of law stated in the said fourth and fifth paragraphs of the bill, and especially it is advised that the alleged and pretended claims of the plaintiffs against the defend-

ant have long since been barred by the statute of limitations and by the laches of the plaintiffs.

8. It has no knowledge in regard to the averments of the
10 seventh, eighth and ninth paragraphs of the bill; it doth not admit the same, and requires full proof thereof, and it denies the conclusions of law stated in said eighth paragraph, but it admits that each of the alleged claims of the plaintiffs were for transactions occurring entirely after the final transfer of the said stock by the defendant to said Lloyd.

9. This defendant, further answering, avers that the plaintiffs, and each of them, should be debarred from maintaining their bill, and recovering any sums of money from this defendant because of their laches in the prosecution of the same.

10. And this defendant, further answering, saith that the said claims and demands of the plaintiffs, and the causes of action and each of them, in the said bill of complaint averred and stated, accrued more than three years before the filing of the original bill in this cause, and that the plaintiffs, and each of them, are barred from the recovery of the same by the provisions of the Maryland Code of Public General Laws, article 57, section one, relating to the limitations of actions, and the defendant prays the benefit of the Code and of all statutes relating to the limitation of actions, as fully as if said defence was presented by plea or demurrer, as well as by this answer, and it pleads the said statute of limitations in bar of the alleged claims of the plaintiffs, and of each of them. And, having fully answered the bill of complaint, it prays hence to be dismissed with its costs.

THE NATIONAL BANK OF BALTIMORE,
By CHRISTIAN DEVRIES, *President.*

[Corporate Seal.]

Attest as to seal:
J. THOS. SMITH, *Cashier.*

WILLIAM A. FISHER,
JAMES L. McLANE,
ALLAN McLANE,
Solicitors for Defendant.

STATE OF MARYLAND, *City of Baltimore,* } *To wit:*

I, Murray Hanson, a notary public of the State of Maryland, duly appointed and qualified, and resident at the city of Baltimore, do hereby certify that on this fourth day of March, A. D., 1898,
11 before me personally appeared at the city aforesaid Christian Devries, president of the National Bank of Baltimore, and made oath on the Holy Evangely of Almighty God that the matters and facts stated in the foregoing answer, so far as they are stated on

his own knowledge are true, and so far as the same are stated not upon his own knowledge, they are true to the best of his information and belief.

In witness whereof I hereunto set my hand and notarial seal, the day and year aforesaid.

MURRAY HANSON,
Notary Public.

[NOTARIAL SEAL.]

Petition of Creditors to be Made Parties Plaintiff and Order of Court Thereon Granting Same.

Filed August 5, 1901.

In the Circuit Court of the United States in and for the District of Maryland.

BRUNSWICK TERMINAL COMPANY and Others
vs.
NATIONAL BANK OF BALTIMORE.

To the honorable the judge of said court:

Your petitioners, W. E. Allison, Fred. Armstrong, Charles J. Anderson, Martin A. Anderson, Mrs. Spencer R. Atkinson, D. D. Atkinson, secretary of State Board Dental Association; American Trust & Banking Co., Victor R. Abrams, R. H. Alston, T. J. Allison, Mrs. J. R. Abrams, Bernheim Brothers, M. M. Bush, Miss M. Loula Baker, M. A. Baker, Sr., Brunswick Lumber Co., W. G. Brantley, D. L. Keller, and Chas. Hoffman, trustees of Oglethorpe Lodge, No. 24, K. of P., S. A. Brockington, secretary Pilots Association B. W. Blount, administrator J. H. Blount, deceased, E. Brobston & Co., agents Mrs. Priscilla Brobston, Stanley Brobston, I. N. Bishop, Brunswick Terminal Co., R. Borchardt, Ben. Borchardt, Mrs. A. Borchardt, F. G. Boatwright, G. W. Blaton, Brunswick Light Horse Guards, F. A. Brewster, L. J. Brown, John W. Bennett, Mrs. S. S. Collins, guardian, A. W. Corker, J. W. Collins, The Commercial Bank of St. Louis, Mo., Henry C. Cuthbert, J. L. Courson, O. W. Cole, E. F. Coney, Dodson-Hils Mnfg. Co., Miss Ruby Dart, John R. Doerflinger, Jr., D. J. Dillon, James Dent, D. H. Deveraux, C. L. Elliott, financier A. O. U. W., Albert Fendig, Mrs. J. Foley, First National
12 Bank of Macon, Ga., C. W. Floyd, Jane Farmer, Ga. Home Insurance Co., Ga. Mills and Elevator Co., P. W. Godfrey, The Gulf National Bank of Tampa, Fla., J. B. Anderson, rec.; B. F. Howard, John Hurn, A. W. Hurn, R. T. Hitch, G. W. Harper, E. Harper, E. Harper & Son, S. B. Henderson, J. W. Heidt, Miss N. Hardcastle, H. H. Harvey, Mrs. J. H. Hickman, Miss Mary Ann Irwin, W. Joerger, Carrie Johnson, A. Kaiser and Brother, A. Kaiser and Brother, A. Kaiser and Brother, M. Kaiser, treasurer; M. Kaiser, Oliver Kennedy, L. E. Lofton, James E. Lambright, Mrs. C. B. Lloyd,

L. J. Leavy, Goldsmith Lehman, B. H. Levy & Brothers & Co., Arnlers Larsens, W. Langley, Mrs. H. S. Lee, treasurer; Leo Lomm, G. Lowenstein, J. M. Lyle, J. D. Mitchell, Kennon Mott, Mayor and Council of the City of Brunswick, Mrs. M. C. Mineham, Mrs. T. J. Mineham, L. A. Miller, manager; L. A. Miller, Mrs. W. D. Miller, J. A. Montgomery, J. A. Montgomery, treasurer; H. A. Miller, Nathan Markow Itz, E. L. McGougan, treasurer; The Merchants and Traders Bank of Brunswick, Ga.; The North-Ameri an Investment Co., W. B. Newkirk, Walter Nathan, National Cash Register Co., Miss J. R. Nathans, Mystice and M. Nelson, J. Nelson Norris, T. E. Owens, treasurer Brunswick Chapter No. 66; T. E. Owens, Vincent Pinebad, Mrs. S. A. Penniman, J. T. Palmer, Sealy Palmer, Mrs. J. J. Pennick, The Phœnix Mutual Life Insurance Co., W. E. Recknagle, receiver St. Zions Lang and Improvement Co.; Wm. E. Recknagle, Mrs. Lizzie M. Russell, J. S. Raffo, Rush Lodge 1 O. O. F., Mrs. Ann Reynolds, Sharp and Perkins, Mrs. Maria L. Stacy, H. E. Schriver, administrator C. W. Schriever, deceased, Misses K. and M. Slater, A. C. Stoddard, Mrs. Mary L. Stacy, Thomas Smales, A. Schriever, Thurber, Whyland & Co., J. S. Thomas, receiver First National Bank of Brunswick; Eolia Tison, administratrix; C. M. Tilton, trustee for his wife; S. T. Thomas, secretary and treasurer; Elias Veroukis, Elias Veroukis, J. R. Weed, Mrs. V. E. Walters, J. J. Wimberly, J. B. Wright, Wright & Cowen, Wright and Cowen, John White, L. L. Wilson, W. M. Wiggins, Mrs. W. A. Way, W. O. W. Elliot, clerk, Way & Shephard, Lois Wilcox, Mrs. C. F. Way, A. & N. M. Black, County of Glynn; J. R. Mason, W. H. Berrie, Mrs. J. H. Hickman, Greer & Odun, N. C. Geer, Richard Taylor, Seaboard National Bank, Mrs. Lula Hay, Mrs. Minnie Duck, A. C. Johnson, Owens Johnson, Wyatt D. Aiken, C. Alexander, Mrs. E. W. Avery, Andrew W. Allen, Alexander Arpontuys, T. J. Allison, M. A. & A. L. Barkulow, Brunswick Terminal Co., Helen M. Beardsley, Brunswick Publishing Co., Brunswick & Western R. R. Co., William Brown, Jr., H. Burford, Lucy Barnwell, treasurer; McC. F. Brown, Brown & Owens, W. S. Branhan, agent; Brother St. Andrew, J. M. Bloodworth, Brown & Owens, W. E. Burbage, Brunswick Oyster Co., Brunswick Coal & Wood Company, Mrs. M. C. Blain, F. D. Biggs, J. N. Brown, L. Beach, S. R. Brown, Miss Annie Butzloff, Sarah Brown, W. S. Branham, G. W. Beaton, Cunningham, Bishop & Reeves, F. E. Cunningham, Mrs. T. F. Crovatt, Coney & Parker, Colat Brothers, E. F. Coney, R. T. Clark, R. V. Covington, F. E. Cunningham, treasurer; Coney & Parker, treasurer; Aaron Cahoun, C. A. Clarke, Florence M. Colesberry, Lula C. Colesberry, Teddie Calvin, Mrs. M. J. Colson, Mrs. A. W. Cornell, J. M. Clark & Co., Myer Clark & Co., Lucy Duglas, J. P. Davenport, Arthur Dexter, S. M. Drury, H. F. du Bignon, treasurer; H. T. Dunn & Co., T. W. Dexter, W. S. Devoe, Jr., F. A. Dunn, S. J. Dent, J. A. Dunwody, H. T. Dunn & Son, E. M. Dart & Co., E. F. Duke, H. W. Dexter, H. F. Dunwody, W. N. Dun-

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ham, Lucy Douglas, treasurer; E. Fabian, Mrs. Mattie A. Fuguson, First National Bank of Marietta, Ga.; Farmers & Mechanics National Bank Westminster, Maryland; T. F. Ferguson, A. F. Franklin, E. Z. F. Golden, A. Gaskin & Co., F. Gatchell, W. B. Gunby, Mrs. S. E. Garber, D. M. Garber, Mrs. Mary E. Gardner, Roy Gale, E. D. Gregory, W. Henderson, S. P. Harris, V. G. Hiser, Jake Hopkins, secretary; —— Herzog, T. W. Hill, J. P. Harvey & Son, E. J. Harvey, trustee; Mrs. Catherine Haywood, B. F. Howard, M. Hirsch, E. J. Harvey, J. P. Harvey, R. J. Hyde, B. H. Houston, Hospital Association, Alexander Hardison, C. B. Irvine, manager, Ruth Irvine, Alfred Jordan, J. P. Jardine, Thomas Johnson, Laura Jones, Tommie Jones, Hattie A. Jacobs, Mrs. B. L. Jordan, M. Kaiser, treasurer Ocean Lodge, F. & A. M., H. M. King, C. J. Cornegay, J. M. Keene, agent, H. M. King, treasurer, D. W. Krauss, Alice M. Keen, G. R. Krauss, J. J. Lott & Co., Ludden & Bates, Mrs. C. B. Lloyd, Arthur Leavy, C. B. Lloyd, trustee, C. B. Lloyd, agent, T. W. Lamb, administrator, A. E. Laborn, H. P. Levin, G. Lehman, William Merchant, W. McCardle, Wash Middleton, Mrs. Allan McDonald, W. H. Morse, L. R. Maxwell, Theodora Cecil Mabry, Woodwofrd Mabry, R. A. Mingle, Mrs. M. Mineham P. C. Miller, W. B. Moore, manager, W. R. Malphurs, L. C. Marlin, S. M. Miller, H. S. McCrary, W. A. McDonald, George McArthur, W. C. McClure, McCrary's stable, McK. F. McCook, M. Nest, Miss Annie B. Noble, Miss J. R. Nathans National Cash Register Co., John Neal & Co., M. A.
14 Naeff, Mrs. S. B. Nathan, North Brunswick Land & Imp. Co., North American Investment Co., R. J. Odum, Oglethorpe Div. K. of P., C. J. Owens, Oyster Cultivation & Canning Co., William Opper, W. T. Owens, Edwin Brewster Phillips, W. F. Penniman, Jr., Minor Perry, John Phillips, W. A. Potter, Mrs. L. L. Palmer, G. F. Ponder, trustee, W. F. Parker, Mrs. J. P. Popwell, Ellen F. Penniman, L. E. Robarts, A. B. Rowe, dealer, W. H. Robertson, J. L. Robertson, Mrs. Ann Reynolds, Annie Range, Emma Robinson, J. D. Sparks, E. Schryver, E. Salisbury, J. C. Stiles, Stubbs-Greer Hardware Co., William Schurk, M. E. Shannon, J. J. Spears, C. Symmes, J. W. Stubbs, Shaw & Clark, Catherine M. Stiles, Oscar B. Stewart, W. P. Stewart, William S. Smith, J. C. Stiles, Frank B. Tupper, Freddie Thomas, W. M. Tupper, R. Torris, trustee, W. M. Toomer, S. J. Thomas, agent, S. J. Thomas, administrator, United States National Bank, E. Veroukis, Hortense Von Beglibeg, Sarah H. Verdery, W. H. Veale, agent Acme Brewing Co., Valentine & Brown, D. D. Verdery, Sarah C. Valentino, Annie A. Valentino, John G. Valentino, C. L. Valentino, W. W. Wilder, Eliza Whitehead, Louisa H. Wright, Ralph T. Waff, H. J. Waff, T. E. Waff, trustee, Mrs. E. D. Walter, A. M. Way, Elizabeth L. Wright, W. A. Way, Mrs. M. E. Wade, J. Warren, agent, W. F. Winekopf, C. S. Wylly, Wm. West, A. V. Wood, W. J. Way, Mrs. J. C. White, Wash Waters & Co., White & Smith, G. Williams, trustee, J. D. Wright, secretary and treasurer, J. M. Wilson, respectfully represent that they are

creditors of the Brunswick State Bank of Georgia, and as such pray that they may be made parties complainant in this suit.

And as in duty, etc.

WILLIAMS, THOMAS & WILLIAMS,
Attorneys for Petitioners.

It is ordered, by the circuit court of the United States in and for the district of Maryland, this 5th day of August, 1901, upon the foregoing petition, that the above mentioned petitioners be and they are hereby made parties complainant in the above suit.

THOS. J. MORRIS, *Judge.*

15 *Agreed Statement of Facts.*

Filed September 5, 1901.

In the Circuit Court of the United States in and for the District of Maryland.

BRUNSWICK TERMINAL COMPANY and Others
vs.
NATION- BANK OF BALTIMORE.

For the purpose of the trial and determination of this cause (all rights of appeal being reserved) the parties hereto agree upon the following as a statement of the facts in the case to be offered in lieu of other proof; reserving to either party, however, the right to refer to any laws or statutes of the State of Georgia germane to the cause, viz:

That the Brunswick State bank was a corporation chartered, organized and existing under the laws of the State of Georgia, and was engaged in the general banking business in that State; that on or about the 30th day of May, 1893, William M. Wiggins and others, alleging themselves to be creditors of said Brunswick State bank, filed their petition in the superior court of Glynn county, Georgia, against said bank, alleging that it was insolvent, and praying for the appointment of a receiver to take possession of its assets, and administer them, and on the 29th day of June following the court decreed that the bank was insolvent and appointed a permanent receiver for the purposes stated; that the State of Georgia and Glynn county were, under the laws of Georgia, preferred creditors, and the assets obtained by the receiver as the assets of the bank were exhausted in the payment of these preferred claims and the costs of litigation, and nothing was left for the payment of other creditors of the bank; that the following persons are creditors of the said Brunswick State bank in the amounts stated in connection with their names, and were originally parties plaintiff in said cause, or having become such subsequently, that is to say:

	Name.	Date when created.	Amount.
	Allison, W. O.	March 30th, 1893.	$360 18
	Armstrong, Fred.	August 9th, 189[illegible]	129 34
	Anderson, Chas. J	April 20th, 1893	91 91
	Anderson, Martin A.	October 8th, 1892.	101 28
	Anderson, Martin A.	February 20th, 1893.	130 00
	Atkinson, Mrs. Spencer R	May 6th, 1893.	26 78
	Atkinson, D. D., sec'y State Board of Dental Association	March 8th, 1892.	108 15
	American Trust & Banking Co	May 1st, 1893.	423 20
16	Abrams, Victor R.	February 17th, 1893.	15 00
	Alston, H. R.	April 18th, 1893.	70 26
	Allison, T. J.	May 24th, 1893.	178 80
	Abrams, Mrs. E. J	May 4th, 1893.	240 00
	Bernheim Brothers	May 22nd, 1893.	85 60
	Bush, M. M	May 22nd, 1893	362 00
	Baker, Miss Loula M	May 19th, 1892.	476 19
	Baker, H. A., Sr.	April 12th, 1893	152 00
	Brunswick Lumber Co	May 28th, 1893.	504 48
	Brantley, W. G., Keller, D. L. and Hoffman, Charles, trustees Oglethorpe Lodge No 24 K. of P.	January 3rd, 1893.	901 21
	Brockington, S. A., sec'y Pilots Association	May 20th, 1893	433 50
	Blount, B. W., administrator J. H. Blount, deceased	May 11th, 1893.	160 00
	Brobston & Co., E. agts.	May 20th, 1893.	262 00
	Brobston, [illegible]. Priscilla	May 20th, 1893.	80 00
	Brobston, S[illegible]nley	August 29th, 1892.	32 01
	Bishop, I. N	May 22nd, 1893.	252 00
	Brunswick Terminal Co.	May 16th, 1893.	6,155 07
	Borchardt, R	April 30th, 1892	229 01
	Borchardt, Mrs. A	January 20th, 1892.	281 59
	Borchardt, Benj	August 2nd, 1892.	149 35
	Boatwright, F. G	April 28th, 1893.	40 00
	Blaton, G. W	May 23rd, 1893.	100 00
	Brunswick Light-House Guards	March 9th, 1893.	211 93
	Brewster, S. A.	January 23rd, 1892.	42 05
	Brown, L. J.	March 21st, 1893.	45 72
	Bennett, John W.	May 2nd, 1892	12 60
	Collins, S. S., guardian	October 24th, 1892.	947 77
	Corker, W. A	April 24, 1893.	40 00
	Collins, W. J	May 15th, 1893.	147 40
	Commercial Bank of St. Louis, Mo.	May 24th, 1893	816 96
	Cuthberth, Henry C	April 25th, 1893	56 00
	Courson, L. J.	May 17th, 1893.	276 23
	Cole, O W.	April 20th, 1893.	20 00
	Coney, E. F	March 4th, 1893.	159 12
	Dodson-Hils Mnfg. Co.	May 18th, 1893	17 79
	Dart, Miss Ruby	October 14th, 1892.	25 31
	Doerflinger, John R., Jr	March 17th, 1892.	57 13
	Dillon, D. J.	May 11th, 1893	511 92
	Dent, James	December 25th, 1891.	86 47
	Deveraux, D. H.	May 26th, 1893.	432 89
	Elliott, C. L., financier	May 22nd, 1893.	26 50
	Fendig, Albert	April 13th, 1893.	44 73
	Foley, Mrs. J	May 23rd, 1893.	200 00
	First National Bank of Macon, Georgia	May 23rd, 1893.	188 65
	Floyd, C. W.	May 2nd, 1893	121 03
	Farmer, Jane.	January 6th, 1893.	75 00
	Ga. Home Insurance Co.	May 23rd, 1893.	120 92
	Ga. Mills & Elevator Co.	May 25th, 1893.	376 50
	Godfrey, P. W.	January 30th, 1893.	52 82

Name.	Date when created.	Amount.
Gulf National Bank of Tampa, Fla., J. B. Anderson, rec	May 1st, 1893	1,065 97
Howard, B. F.	April 17th, 1893	44 00
Hurn, John	May 24th, 1893	293 25
Hurn, A. W.	May 24th, 1893	376 75
Hitch, R. T.	May 19th, 1893	51 90
Harper, G. W.	May 15th, 1893	500 00
Harper, E.	May 15th, 1893	1,500 00
Henderson, S. R.	August 25th, 1892	13 70
17 Heidt, J. W.	January 21st, 1892	106 10
Hardcastle, Miss N.	May 17th, 1893	10 00
Harvey, H. H.	May 11th, 1893	16 00
Hickman, Mrs. J. H.	April 24th, 1893	455 05
Irwin, Miss Mary Ann	April 10th, 1893	44 00
Joerger, W.	May 22nd, 1893	100 00
Johnson, Carrie	December 15th, 1892	121 62
Kaiser, A. & Brother	May 17th, 1893	220 00
Kaiser, A. & Brother	May 23rd, 1893	200 00
Kaiser, A. & Brother	April 28th, 1893	1,147 08
Kaiser, M., treasurer	February 1st, 1893	240 18
Kaiser, M.	September 29th, 1892	500 00
Kennedy, Oliver	March 12th, 1892	1,163 87
Loftin, L. E.	February 6th, 1893	100 52
Lambright, James E.	October 6th, 1892	131 50
Lloyd, Mrs. C. B.	January 28th, 1893	1,000 00
Leavy, L. J.	April 5th, 1893	135 57
Lehman, Goldsmith.	January 12th, 1892	82 22
Levy, B. H. & Bros. & Co.	May 25th, 1893	153 26
Larsen, Arnlers	May 10th, 1893	376 02
Langley, W.	April 6th, 1893.	35 89
Lee, Mrs. H. S. treasurer	February 23rd, 1893	25 00
Lomm, Leo	February 10th, 1892	50 37
Lowenstein, G.	May 19th, 1893	352 18
Lyle, J. M.	April 10th, 1893	35 33
Mitchell, J. D.	December 8th, 1892	700 00
Mott, Kennon	May 19th, 1893	132 99
Mayor & council city of Brunswick	March 18th, 1892	1,652 00
Mineham, Mrs. M. C.	January 28th, 1893	1,500 00
Mineham, Mrs. P. J.	March 28th, 1893	244 80
Miller, L. A., manager	January 9th, 1893	273 94
Miller, L. A.	April 3rd, 1893	124 78
Miller, Mrs. W. D.	May 5th, 1893	61 00
Montgomery, J. A.	May 4th, 1893	36 72
Montgomery, J. A., treasurer	September 19th, 1892	127 61
Miller, H. A.	March 17th, 1893	34 92
Markowitz, Nathan	May 20th, 1893	38 50
McGougan, E. L., treasurer	February 24th, 1892	17 40
Merchants & Traders Bank of Brunswick, Ga.	May 23rd, 1893	1,587 70
North American Investment Co.	April 11th, 1893	50 00
Newkirk, W H.	January 11th, 1892	376 81
Nathan, Walter	February 24th, 1893	25 01
National Cash Register Co.	May 24th, 1893.	9 90
Nathan, Miss J. R.	March 20th, 1893	300 00
Nelson, Mystice and M.	February 2nd, 1892	153 99
Norris, Nelson J.	June 16th, 1892	10 25
Owens, T. E., treasurer Brunswick Chapter No. 66	March 4th, 1893	64 49
Owens, T. E.	May 9th, 1893	9 11
Pinebad, Vincent	October 15th, 1892	615 00
Penniman, Mrs. S. A.	May 13th, 1893	540 00
Palmer, J. T.	April 21st, 1893	253 49

	Name.	Date when created.	Amount.
	Palmer, Sealy	February 8th, 1892	14 63
	Pennick, J. J. Mrs.	March 10th, 1892	319 58
	Phœnix Mutual Life Ins. Co.	April 21st, 1893	127 72
	Recknagel, W. E., rec. St. Sions Land & Imp. Co.	September 10th, 1893	238 62
	William E. Recknagel	January 12th, 1893	722 31
	Mrs. Lizzie M. Russell	April 21st, 1893	660 00
	Raffo, J. S.	May 6th, 1893	99 50
18	Rush Lodge I. O. O. F.	April 28th, 1893	83 91
	Reynolds, Mrs. Ann	October 7th, 1891	200 00
	Sharp & Perkins	May 25th, 1893	85 23
	Stacy, Mrs. Maria L.	March 2nd, 1893	4,047 27
	H. E. Schriever, adm'r C. W. Schriever, deceased	May 9th, 1893	2-5 10
	Slater, Misses K. and M.	May 3rd, 1893	105 93
	Stoddard, A. C.	July 1st, 1892	144 17
	Stacy, Mrs. Mary L.	February 10th, 1893	250 00
	Smales, Thomas	May 1st, 1893	30 00
	Schriever, A.	May 15th, 1893	86 40
	Thurber, Whyland & Company	May 24th, 1893	35 22
	Thomas, J. S., rec. of the First Nat. Bank of Brunswick	May 15th, 1893	2,111 59
	Tisch, Eolia, adm'x	April 22nd. 1893	35 00
	Tilton, C. M., trustee for his wife	January 12th, 1892	148 64
	Thomas, S. J., sec. & treas.	May 2nd, 1893	211 97
	Veroukis, Elias	May 2nd, 1893	663 40
	Veroukis, Elias	February 2nd, 1893	500 00
	Weed, J. R.	February 10th, 1893	199 60
	Walters, Mrs. V. E.	February 24th, 1891	150 58
	Wimberly, J. J.	January 20th, 1893	3,322 80
	Wright, J. B.	May 23rd, 1893	310 00
	Wright & Cowen	June 29th, 1892	1,000 00
	Wright & Cowen	August 12th, 1892	1,000 00
	White, John	March 15th, 1892	335 20
	Wilson, L. L.	February 9th, 1893	80 00
	Wiggins, W. M.	May 8th, 1893	307 72
	Way, Mrs. W. A.	May 13th, 1893	65 00
	W. O. W. (Elliott Clerk)	May 22nd, 1893	28 05
	Way & Shephard	May 19th, 1893	61 29
	Wilcos, Lois	May 6th, 1893	42 30
	Way, Mrs. C. F.	April 1st, 1892	23 43
	Black, A. & N. M.		251 09
	County of Glynn	April 2nd, 1893	2,758 20
	Mason, J. R.	February 1st, 1892	432 27
	Berrie, W. H.	February 12th, 1892	2,494 59
	Hickman, Mrs. J. H.	April 24th, 1893	455 05
	Greer & Odum	February 10th, 1893	89 52
	Greer, N. C.	February 9th, 1893	170 17
	Taylor, Richard	March 28th, 1893	520 00
	Seaboard national bank	April 8th, 1892	2,750 00
	Hay, Mrs. Lula	January 5th, 1892	52 77
	Duck, Mrs. Minnie	January 8th, 1893	804 50
	Johnson, A. C.	May 10th, 1893	62 63
	Johnson, Owen	November 3rd, 1892	29 92

That the following persons are creditors of the Brunswick State bank in the amounts stated in connection with their names although their claims were never proved in the said case, that is to say:

Aiken, Wyatt D	May 25th, 1893			$ 74
Alexander, C	"	"		6 50
Avery, Mrs. E. W	"	"		76 31
Allen, Andrew W	"	"		2 00
Arpontuys, Alexander	"	"		68 00
19 Allison, T. J	May 25th, 1893			3 00
Barkulow, M. A. & A. L	"	"		8 27
Brunswick Terminal Co	"	"		3,464 01
Beardsley, Helen M	"	"		5 00
Brunswick Publishing Co	"	"		211 09
Brunswick & Western R. R. Co	"	"		65 86
Brown, William, Jr	"	"		26 36
Burford, H	"	"		448 13
Barnwell, Lucy, treasurer	"	"		145 54
Brown, F. McC	"	"		74 44
Brown & Owens	"	"		69 35
Branham, W. S., agent	"	"		100 00
Brother St. Andrew	"	"		6 05
Bloodworth, J. M	"	"		43 79
Brown & Owens	"	"		114 51
Burbage, W. W	"	"		13 31
Brunswick Oyster Company	"	"		27 18
Brunswick Coal & Wood Co	"	"		55 05
Blain, Mrs. M. C	"	"		8 85
Biggs, F. D	"	"		71 20
Brown, J. N	"	"		35 25
Beach, L	"	"		54 30
Brown, R. S	"	"		11 50
Butzloff, Miss Annie	"	"		144 19
Brown, Sarah	"	"		4 00
Branham, W. S	"	"		28 45
Beaton, G. W	"	"		100 00
Cunningham, Bishop & Reaves	"	"		12 51
Cunningham, F. E	"	"		325 15
Calvin, Teddy	"	"		29 71
Crovatt, Mrs. T. F	"	"		2 00
Coney & Parker	"	"		554 55
Collat Bros	"	"		153 74
Coney, E. F	"	"		59 12
Clark, R. T	"	"		52 66
Covington, R. V	"	"		37 26
Cunningham, F. E., treasurer	"	"		23 28
Coney & Parker, treasurer	"	"		31 55
Cahoun, Aaron	"	"		2 75
Clarke, S. A	"	"		10 00

Colesberry, Florence M.	May 25th, 1893			$1 00
Colesberry, Lula C.	"	"	.....	20 43
Colson, Mrs. M. J.	"	"	.....	24 00
Cornell, Mrs. A. W.	"	"	.....	10 00
Clarke, J. M. & Co.	"	"	.....	54 35
Clarke, Myer & Co.	"	"	.....	12 10
20 Douglas, Lucy	May 25th, 1893		.....	5 22
Davenport, J. T.	"	"	.....	1 00
Dexter, Arthur	"	"	.....	12 41
Drury, S. M.	"	"	.....	2 46
Dubignon, H. F., treasurer	"	"	.....	15
Dunn, H. T. & Co	"	"	.....	80
Dexter, T. W.	"	"	.....	466 28
Devoe, W. H., Jr.	"	"	.....	23 93
Dunn, F. A.	"	"	.....	3 75
Dent, S. J.	"	"	.....	71
Dunwody, J. A.	"	"	.....	89 00
Dunn, H. T. & Son	"	"	.....	31 10
Dart, E. M. & Co.	"	"	.....	50
Duke, E. F.	"	"	.....	43 18
Dexter, H. W.	"	"	.....	3 50
Dunwody, H. F.	"	"	.....	2 09
Dunham, W. N.	"	"	.....	38 34
Douglas, Lucy, treasurer	"	"	.....	43 52
Fabian, E.	"	"	.....	27
Ferguson, Mrs. Mattie A.	"	"	.....	19 52
First National Bank of Marietta, Ga.	"	"	.....	170 69
Farmers & Mechanics Nat. Bank of Westminster, Md	"	"	.....	623 34
First National Bank of Brunswick	"	"	.....	16 80
Ferguson, T. B.	"	"	.....	49 17
Franklin, A. F.	"	"	.....	46 48
Golden, E. Z. F.	"	"	.....	25 00
Gaskin & Co., A.	"	"	.....	20 00
Gatchell, F.	"	"	.....	50 57
Gunby, W. B.	"	"	.....	40 68
Garber, Mrs. S. E.	"	"	.....	58 26
Garber, D. M.	"	"	.....	13 36
Gardiner, Mrs. Mary E.	"	"	.....	79 07
Gale, Roy	"	"	.....	5 00
Gregory, E. D.	"	"	.....	25 00
Henderson, W.	"	"	.....	8 00
Harris, S. P.	"	"	.....	8 00
Heiser, V. G.	"	"	.....	167 36
Hopkins, Jake, sec'y	"	"	.....	38 48
Herzog	"	"	.....	41 94
Hill, T. W.	"	"	.....	2 28
Harvey, J. P. & Sons	"	"	.....	49
Harvey, E. J., trustee	"	"	.....	27 50

Haywood, Mrs. Katherine	May 25th, 1893			$2 38
Howard, B. F.	"	"		44 00
21 Hirsch, M.	May 25th, 1893			05
Harvey, E. J.	"	"		28 78
Harvey, J. P.	"	"		104 84
Hyde, R. J.	"	"		259 08
Houston, B. H.	"	"		12
Hospital Association	"	"		21 07
Hardison, Alex	"	"		3 00
Irvine, C. B. manager	"	"		6 25
Irvine, Ruth	"	"		2 45
Jordan, Alfred	"	"		5 47
Jardine, J. P	"	"		6 41
Johnson, Thomas	"	"		4 15
Jones, Laura	"	"		3 18
Jones, Tommie	"	"		2 00
Jacobs, Hattie A	"	"		3 00
Jordon, Mrs. B. L.	"	"		9 00
Kaiser, M., treasurer Ocean Lodge F. & A. M.	"	"		452 76
King, H. M.	"	"		2 85
Cornegay, C. J.	"	"		100 00
Keen, J. M., agent	"	"		6 59
King, H. M., treasurer	"	"		17 50
Krauss, D. W.	"	"		7 50
Keen, Alice M.	"	"		3 61
Krauss, G. R.	"	"		05
Lott, J. J. & Co.	"	"		278 33
Luddin & Bates	"	"		50
Lloyd, Mrs. C. B.	"	"		70 00
Leavy, Arthur, trustee	"	"		15 73
Lloyd, C. B.	"	"		40 59
Lloyd, C. B., agent	"	"		526 30
Lamb, T. W., adm'r	"	"		1 90
Laborn, A. E.	"	"		65
Levin, H. P.	"	"		6 75
Lehman, G.	"	"		1 00
Merchant, William	"	"		10 00
McCardle, W	"	"		8 00
Middleton, Wash.	"	"		9 00
McDonald, Mrs. Allen	"	"		3 60
Morse, W. H.	"	"		24
Maxwell, L. R.	"	"		21 11
Mabry, Theodora, Cecil	"	"		1 88
Mabry, Woodford	"	"		1 10
Mingle, R. A.	"	"		2 12
Mineham, Mrs. M.	"	"		1 92
Miller, P. C.	"	"		2 84

22	Moore, W. B., manager.....	May 25th, 1893.....		$1	00
	Malphrus, W. R.....	"	"	15	37
	Marlin, L. C.....	"	"	23	80
	Miller, S. M.....	"	"	54	13
	McCreary, H. S.....	"	"	41	14
	McConald, W. A.....	"	"	117	14
	McArthur, George.....	"	"	175	90
	McClure, W. C.....	"	"	62	18
	McCreary's stable.	"	"	3	01
	McCook, McK. F.....	"	"	1	24
	Neat, M.....	"	"	4	45
	Noble, Miss Annie B.....	"	"	16	00
	Nathans, Miss J. R.....	"	"	80	00
	National Cash Register Co.....	"	"	1	31
	Neal & Co., John.....	"	"	17	80
	Naeff, M. A.....	"	"	272	85
	Nathans, Mrs. S. B..	"	"		19
	North Brunswick Land & Imp. Company.....	"	"	2	73
	North American Investment Co.....	"	"	50	00
	Odum, R. J.....	"	"	10	00
	Oglethorpe Div. K. of P.....	"	"		36
	Owens, C. J.....	"	"		65
	Oyster Cultivation and Canning Company.....	"	"	1	96
	Opper, William.....	"	"	5	33
	Owens, W. T.....	"	"	1	60
	Phillips, Edwin Brewster.....	"	"	25	30
	Penniman, W. F., Jr.	"	"	8	72
	Perry, Minor.....	"	"	33	51
	Phillips, John.....	"	"	23	15
	Potter, W. A.....	"	"	25	34
	Palmer, Mrs. L. L., treas.....	"	"	1	10
	Ponder, G. F., trustee.....	"	"	10	62
	Parker, W. F.....	"	"	3	61
	Powell, Mrs. J. B.....	"	"	17	90
	Penniman, Ellen F.....	"	"	5	50
	Robarts, L. E.....	"	"	26	22
	Rowe, A. B., dealer.....	"	"		49
	Robertson, W. H.....	"	"	6	00
	Robertson, J. L.....	"	"	6	00
	Reynolds, Mrs. Anne.....	"	"	7	00
	Range, Annie.....	"	"	5	00
	Robinson, Emma...	"	"	10	13
	Sparks, J. D.....	"	"	15	00
	Shryver, E.....	"	"	69	55
23	Salisbury, E...	May 25th, 1893.....		10	00
	Stiles, J. C.....	"	"	4	84
	Stubbs-Greer Hardware Co.....	"	"	152	00

Shurk, William	May 25th, 1893			$30 00
Shannon, M. E	"	"		3 82
Spears, J. J	"	"		45 45
Symmes, C	"	"		60 00
Stubbs, J. W	"	"		100 00
Shaw & Clarke	"	"		11 00
Stiles, Katherine M	"	"		1 25
Stewart, Oscar B	"	"		4 00
Stewart, W. T	"	"		3 00
Smith, William S	"	"		5 12
Stiles, J. C	"	"		4 52
Tupper, Frank B	"	"		150 00
Thomas, Freddie	"	"		13 57
Tupper, W. M	"	"		293 58
Torras, R., trustee	"	"		60
Toomer, W. M	"	"		9 83
Thomas, S. J., agent	"	"		49 32
Thomas, S. J., adm'r	"	"		9 91
U. S. national bank	"	"		6,500 00
Veroukis, E	"	"		128 06
Von Beglibeg, Hortense	"	"		9 00
Verdery, Sarah H	"	"		20 95
Veale, W. H., agent Acme Brewing Co	"	"		18
Valentino & Brown	"	"		74 55
Verdery, D. D	"	"		11 81
Valentino, Sarah C	"	"		5 20
Valentino, Annie A	"	"		5 20
Valentino, John G	"	"		5 20
Valentino, C. L	"	"		5 20
Wilder, W. W	"	"		1 00
Whitehead, Eliza	"	"		11 00
Wright, Louisa H	"	"		15 00
Waff, Ralph T	"	"		14 75
Waff, H. J	"	"		23 25
Waff, T. E., trustee	"	"		40 00
Walter, Mrs. E. D	"	"		8 00
Way, A. M	"	"		2 75
Wright, Elizabeth L	"	"		309 82
Way, W. A	"	"		3 50
Wade, Mrs. M. E	"	"		6 19
Wood, A. V	"	"		11 17
Way, W. J	"	"		8 32
Warren, J., agent	"	"		101 98
24 Weinkopf, W. F	May 25th, 1893			39 57
Wiley, C. S	"	"		40 00
White, Mrs. J. C	"	"		13 16
West, William	"	"		5 00
White & Smith	"	"		3 40

Williams, G., trustee	May 25th, 1893	$ 05
Wright, J. B., sec'y & treas	May 25th, 1893	160 25
Wilson, J. M	" "	1 72

That the defendant is a national bank, chartered, organized and conducting a business of a bank at the city of Baltimore, in the State of Maryland, under the provisions of the statutes of the United States in relation to national banks and their operation.

That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of ten thousand dollars ($10,000.00), endorsed by the co-partnership firm of Lloyd & Adams, and by W. A. Cunningham, and received, together with the note, as the collateral security for its payment one hundred and ten (110) shares of the capital stock of said Brunswick State bank of the par value of one hundred dollars ($100.00) per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State bank, on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity, and the defendant being under obligation to return the stock, the pledge being at an end and the pledgor entitled to its return, re-transferred the stock on the books of said Brunswick State bank by direction of the pledgor, and the said transfer was fully completed on the books of the said bank on or before the 20th day of October, 1890, but no notice by publication of the fact of said retransfer was given by the defendant; that the defendant never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the Brunswick State bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof.

That the indebtedness of said Brunswick State bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date, and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State bank as a stockholder.

25 It is agreed that the court may draw inferences from any of the foregoing facts to the same extent as if the facts had been proven by means of witnesses.

WILLIAMS, THOMAS & WILLIAMS,
Attorneys for Plaintiffs.
WILLIAM A. FISHER,
ALLAN McLANE,
Solicitors for Defendant.

Opinion.

Filed December 18, 1901.

In the Circuit Court of the United States for the District of Maryland.

THE BRUNSWICK TERMINAL COMPANY and Others
vs.
THE NATIONAL BANK OF BALTIMORE. } In Equity.

MORRIS, *District Judge:*

This is a bill filed January 14, 1898, by the Brunswick Terminal Company and others, creditors of the Brunswick State bank, a corporation chartered by the State of Georgia, which failed and was declared insolvent in May, 1893.

The object of the bill is to enforce in behalf of the creditors of said Brunswick State bank against the National Bank of Baltimore, an alleged stockholder, a statutory liability equal to the par value of the stock in the Brunswick State bank at one time standing in the name of said National Bank of Baltimore.

This case was heard before on a demurrer to the defendant's answer setting up the plea of limitations under the Maryland statute. This court overruled the demurrer and on the plaintiff's appeal to the circuit court of appeals for the fourth circuit that decision was reversed and it was held that the Georgia statute, by which suits to enforce rights accruing under acts of incorporation may be brought within twenty years, was applicable, and that the Maryland statute was not to be applied. Brunswick Terminal Co., *v.* Nat. Bank of Balt., 99 Fed. Rep., 635. The case now comes on to be heard upon the merits.

The agreed statement of facts contains the following:

"That in the month of August, 1890, the defendant dis-
26 counted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of $10,000, endorsed by the co-partnership firm of Lloyd & Adams, and received, together with the note, as the collateral security for its payment, 110 shares of the capital stock of said Brunswick State bank of the par value of $100 per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State bank on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity and the defendant, being under obligation to return the stock, the pledge being at end and the pledgor entitled to its return, retransferred the stock on the books of said Brunswick State bank by direction of the pledgor and said transfer was fully completed on

the books of the said bank on or before the *20th day of October, 1890*, but no notice by publication of the fact of said retransfer was given by the defendant; that the defendant never had or claimed any interest in said stock save under the pledge aforesaid, but never notified the Brunswick State bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof. That the indebtedness of said Brunswick bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State bank as a stockholder."

The liability of stockholders of the Brunswick State bank to the creditors thereof is created by section 9 of its charter found in the Laws of Georgia of 1889, page 522, which is as follows:

"SECTION 9. Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets; and the stockholders in addition thereto, shall be individually liable, equally and ratably, and not one for another, as sureties to the creditors of such corporation for all contracts and debts of said corporation, *to the extent of the amount of their stock therein*, at the par value thereof, respectively, *at the time the debt was created*, in addition to the amount invested in such shares."

By this provision the stockholder is made liable only to the extent of his stock at the time the debt was created.

It is admitted that the defendant acquired the stock as pledgee on August 25, 1890, and retransferred it on October 20, 1890,
27 and it is admitted that all the transactions with the Brunswick State bank from which the debts of the plaintiffs arose commenced after the date when the defendant had retransferred the stock on the books of the bank. If we look solely to the wording of section 9, it would seem plain, and not to be disputed, that at the time the debts were created the defendant had no stock in the Brunswick State bank, and it was under no liability whatever.

But the plaintiffs invoke section 1496 of the Georgia Code of 1882, which is as follows:

"When a stockholder in any bank or any other corporation is individually liable under the charter and shall transfer his stock he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer of his intention to hold him liable, provided he shall give notice once a month, for six months, of such transfer immediately thereafter in two newspapers in and nearest the place where such institution shall keep its principal office." As by the charter of the Brunswick State bank a stockholder was only liable as surety to creditors to the extent of his stock in the bank at the time the debt was created, and as the defendant at the time the debts of the plaintiffs were created had no stock in the bank, and was, therefore, under no liability, it does not appear that section 1496 of the Georgia Code could have

any application to this defendant. This section is applicable to a stockholder who being individually liable to a creditor or creditors shall then transfer his stock. The stockholders in the Brunswick State bank were only liable for debts created while they held their stock, and, as applied to them, this section means that a stockholder who has become individually liable to a creditor by holding stock at the time the creditor's debts were created shall be exempt from such liability, provided he publishes a notice that he has transferred his stock, unless within six months after the transfer the creditor gives him notice that he intends to hold him liable. This would seem to be the plain meaning and intention of the statute.

As section 1496 enables a stockholder, who by the charter is already under liability to a creditor, to escape that liability by transferring his stock, unless the creditor gives him notice within six months after the transfer, it is sensible and understandable why notice of the transfer should be given, but as to persons who as yet had no dealing with the bank out of which debts could be *be* created,

to require notice to them would not be sensible, and would
28 be a mere arbitrary penalty without reason, a thing which is

not to be imputed to the legislature, if the section is capable of a more reasonable interpretation. If no notice of transfer by advertisement is given by the stockholder, then no notice within six months need be given by the creditor, and both stand upon the rights given by the charter, unaffected by section 1496 of the code.

Against this construction the complainants urge a ruling by the supreme court of Georgia in the case of Robertson *vs.* Downing, 95 Ga., 505 (1894). This was a proceeding similar to the present one to hold stockholders of the insolvent Brunswick State bank, resident in Georgia, liable to creditors.

The supreme court of Georgia filed no opinion, but by a head note memorandum ruled (one of the three judges doubting) that the liability of a stockholder continued for any debt contracted by the corporation at any time, both before as well as after he had transferred his stock, unless he had given notice of the transfer conformably to section 1496 of the code.

This ruling was made four years after the defendant in this case had re-transferred the stock held by it in pledge, from August 25th to October 20th, 1890. The same questions growing out of the liability of the stockholders of the Brunswick State bank came before the supreme court of Georgia, again in Chatam Bank *vs.* Brobston, 99 Ga., 801 (1895). In that case two of the judges considered themselves bound by the previous ruling in 95 Georgia, and the third judge recorded his dissent. The court recites that section 1896 of the code had been repealed, and that the legislature had in 1894, substituted a provision that the individual liability of a stockholder should cease upon transfer of his stock, unless the corporation should fail within six months after the transfer; and that in view of this

change in the law differences of opinion between the judges were not important, except as affecting the particular litigation before it. The court says (page 804): "If another case should arise the decision of which would depend upon the question as to which we disagree, the whole matter would still be open to review by a bench of six justices. Accordingly, we have agreed among ourselves to let the present decision stand upon the head notes as announced, with the foregoing explanation of our reasons for not entering upon a discussion as to what should be the proper construction of the bank charter now under consideration.

The present defendant was not a party to either of the above-mentioned cases, never was within the jurisdiction of the
29 courts of Georgia, never was a real, but only a nominal shareholder for three months in 1890, and in view of this explanation by the supreme court of Georgia it would seem that the question of the liability of the defendant in the case now being considered may be fairly treated as still open for independent consideration and examination.—

Central R. R. *vs.* Wright, 164 U. S., 327–332.

Section 9 of the charter of the Brunswick State bank, creating the individual liability of stockholders, is in substantially the same words as are used in many statutes in many different States, and its meaning may be said to be fixed by common consensus; and, although the highest court of the State may give it a different and peculiar construction will be binding upon those whose liability is afterwards incurred, it would seem but just as to those who have made a *bona fide* transfer of their stock before a different interpretation was announced that their liability should be governed by the general- accepted *by* meaning.

Carroll County *vs.* Smith, 111 U. S., 556, was a case with regard to the validity of certain county bonds which the constitution and laws of Mississippi provided should not be valid, unless two-thirds of the qualified voters of the county at an election should assent thereto. The supreme court of Mississippi construed the words of the constitution and the laws requiring the assent of two-thirds of the qualified voters to mean two-thirds of the whole number qualified to vote and not merely two-thirds of such number as should actually vote at the election, and the supreme court of Mississippi for that reason declared the bonds invalid. The Supreme Court of the United States, finding that the *bona fide* holder of the same issue of bonds in the case brought before it was not a party to the case in the State court, and that the rule of construction announced in that case had not been previously established so as to have become recognized as the settled law of the State, did not feel constrained to accept the conclusions of the supreme court of Mississippi, for the reason that the generally accepted meaning of similarly worded

provisions had been that what was meant was two-thirds of the persons who actually cast their votes.

Tolson *vs.* Ninety-six, 159 U. S., 625, 626, 627.
Pine Grove *vs.* Talcott, 19 Wal., 666.
Burgess *vs.* Tilghman, 107 U. S., 20–33.
Pana *vs.* Bowler, 107 U. S., 529–540.
Thompson *vs.* Perrine, 103 U. S., 817.
Butz *vs.* Muscatine, 8 Wal., 583.
Pease *vs.* Peck, 18 Howard, 598.

30 The case now in hand I take to be one in which, for similar reasons, I am not bound to follow the Georgia decision. It surely was not to be supposed by any one who examined the charter of the Brunswick State bank and section 1496 of the Code of Georgia that it was intended to inflict a mere penalty upon those who might from time to time hold its stock by arbitrarily making them liable for all transactions during twenty years after they had ceased to be stockholders.

As is said in Williams *vs.* Hanna, 40 Indiana, 544, quoted in Thompson's Liability of Stockholders, section 95, "The creditor, if he looks to the individual liability of stockholders at all, looks to those who are stockholders at the time he lends his credit and to those he should be content to look for the collection of his debt."

See also 1 Cook on Stockholders, section 259.
Matthews *vs.* Albert, 24 Md., 527–539.

As the defendant did not appear on the stock registry as one of the stockholders of the Brunswick State bank at the time the complainants gave it credit, no credit could have been given on account of any suppose- liability of the defendant as a stockholder.

The unexpected interpretation of the Georgia statute made in 1894 imposing a liability on the defendant growing out of a transfer of stock closed in 1890, in favor of creditors whose debts accrued, as stated in the bill of complaint, during the years 1892 and 1893 has all the elements of injustice which attach to *ex post facto* and retroactive laws.

I hold that the defendant is not liable for the reason that the defendant had no stock at the time when the debts of the complainants were created.

It is also urged that, as the defendant is a national bank, it had no power under its charter to invest its money in the shares of a corporation.

California Bank — Kennedy, 167 U. S., 362.
Concord Nat'l Bank *vs.* Hawkins, 174 U. S., 362.

And that the creditors of the Brunswick State bank, from the fact of this want of corporate power, were affected with notice that the shares standing in the name of the National Bank of Baltimore were not its absolute property, but held as a collateral security,

the pledgor being the real owner, and that, therefore, the defendant is not estopped from showing the facts which would have been discovered if enquiry had been made.

Robinson *vs.* Southern National Bank, 180 U. S., 295–309.
Baker *vs.* Old National Bank, 86 Fed. Rep., 1006.

31 I am, however, so well satisfied upon the ground already stated that the defendant is not liable that I do not consider this other ground of defense urged by the defendant.

I will sign the decree dismissing the bill of complaint.

Final Decree.

Filed December 20th, 1901.

In the Circuit Court of the United States for the District of Maryland. In Equity.

THE BRUNSWICK TERMINAL COMPANY and Others
vs.
THE NATIONAL BANK OF BALTIMORE.

This cause standing ready for hearing and being submitted, the counsel for the parties were heard, and the proceedings read and considered.

It is thereupon this twentieth day of December, in the year nineteen hundred and one, by the circuit court of the United States for the district of Maryland adjudged, ordered and decreed that the bill of complaint be and the same is hereby dismissed with costs.

THOS. J. MORRIS, *Judge.*

Petition of Complainants for an Appeal and Order Allowing Same.

Filed December 30, 1901.

In the Circuit Court of the United States for District of Maryland.

BRUNSWICK TERMINAL COMPANY ET AL.
vs.
NATIONAL BANK OF BALTIMORE.

To the honorable the judge of said court:

The complainants herein, being aggrieved by the decree of the circuit court of the United States for the district of Maryland in this cause, by *its* petition pray that they may be allowed to appeal to the United States circuit court of appeals for the fourth circuit from the decree which was passed herein on the 20th day of December,

1901; and that a proper citation may be issued and served
32 upon the defendant; that a record of the proceedings in this cause may be transmitted to the said circuit court of appeals, that the said decree may be reversed and that a decree may be directed to be passed in favor of these complainants, and your petitioners further pray that your honorable court will prescribe the amount of appeal bond to be given.

And, as in duty, &c.

WILLIAMS, THOMAS & WILLIAMS,
GOODYEAR & KAY,
Sols. for Plaintiffs.

Appeal allowed as prayed & appeal bond for costs fixed at one hundred dollars.

THOS. J. MORRIS, *Judge.*

Assignment of Errors.

Filed December 30th, 1901.

In the Circuit Court of the United States for District of Maryland.

THE BRUNSWICK TERMINAL CO. and Others, Pl't'ffs,
vs.
NATIONAL BANK OF BALTIMORE, Def't.

Assignment of errors.

Come now the plaintiffs, and file the following assignment of error- upon which they and each of them will rely in the prosecution of the writ of error in the above entitled cause.

1. That the United States circuit court erred in dismissing the bill of complaint of the plaintiffs.

2nd. That the said court erred in rendering a decree against the plaintiffs in said cause upon the pleadings and the agreed statement of facts.

Wherefore the said plaintiffs in error pray that the judgment and decree of the said court be reversed and that judgment and decree be directed entered for plaintiffs in error.

WILLIAMS, THOMAS & WILLIAMS,
GOODYEAR & KAY,
Solicitors for Plaintiffs in Error.

33 *Appeal Bond.*

Filed 6th January, 1902.

Know all men by these presents, that we, the Fidelity and Deposit Company of Maryland as principal, is held and firmly bound unto the National Bank of Baltimore, in the full and just sum of one hundred dollars ($100.00), to be paid to the said The National Bank of Baltimore, its certain attorney, successors, or assigns; to which payment well and truly to be made, we bind ourselves, our successors or assigns, by these presents.

Sealed with our seals and dated this fourth day of January, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a sitting of the United States circuit court for the district of Maryland, in a suit depending in said court, between Brunswick Terminal Company and others, plaintiffs, and The National Bank of Baltimore, defendant, a decree was rendered against the said Brunswick Terminal Company and others, and the said Brunswick Terminal Company and others having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said The National Bank of Baltimore, citing and admonishing it to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond on the day in the said citation mentioned.

Now the condition of the above obligation is such, that if the said Brunswick Terminal Company and others shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
Per EDWIN WARFIELD, *President.*

Attest:

[Corporate Seal.]

THOMAS L. BERRY, *Assistant Secretary.*

Sealed and delivered in presence of—

—— ——.

Approved by—
THOS. J. MORRIS, *Judge.*

34 *Citation.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the National Bank of Baltimore, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond on the 4th day of February next, pursuant to an appeal from a decree of the circuit court of the United States for the district of Maryland, in your favor, passed on the 20th day of December, 1901, in a cause in said court wherein The Brunswick Terminal Company and others are complainants, and you are defendant to show cause, if any there be, why the said decree rendered against the said complainants in said cause mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas J. Morris, judge of the said circuit court of the United States, this sixth day of January, in the year of our Lord one thousand nine hundred and two.

THOS. J. MORRIS, *Judge.*

Service of the within citation acknowledged this 7th day of January, 1902.

ALLAN McLANE, *Solicitor.*

Order to Transmit Record.

Thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States circuit court of appeals for the fourth circuit; and the same is transmitted accordingly.

Teste:

JAS. W. CHEW, *Clerk.*

35 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *District of Maryland,* } *To wit:*

I, James W. Chew, clerk of the United States circuit court for the district of Maryland, do certify that the foregoing is a true transcript of the record and proceedings of the said court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said circuit court, this 21st day of January, A. D. 1902.

[Seal of the Court.]

JAS. W. CHEW,
Clerk of said Circuit Court.

36 *Proceedings in the United States Circuit Court of Appeals for the Fourth Circuit.*

THE BRUNSWICK TERMINAL COMPANY, a Corporation, *et al.*, Appellants,
versus
THE NATIONAL BANK OF BALTIMORE, Appellee. } No. 439.

Appeal from the circuit court of the United States for the district of Maryland.

Jan. 23, 1902.—Transcript of the record is filed and the cause is docketed.

Same day.—Appearance of Williams, Thomas & Williams for appellants, order filed.

Jan. 25, 1902.—Twenty copies of the printed record *is* filed.

Jan. 29, 1903.—Appearance of Allan McLane for the appellee, order filed.

37 *Stipulation to Continue.*

Filed Feb. 4, 1902.

United States Circuit Court of Appeals, Fourth Circuit.

THE BRUNSWICK TERMINAL COMPANY ET AL.
vs.
THE NATIONAL BANK OF BALTIMORE. } No. 439.

Henry T. Meloney, Esq., clerk, etc.:

Enter the above entitled case "continued."

WILLIAMS, THOMAS & WILLIAMS,
Solicitor for Appellant.
ALLAN McLANE, *Solicitor for Appellee.*

Feb. 4, 1902 (February term, 1902).—Cause is continued.

May 10, 1902 (May term, 1902).—The said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel.

38 And thereafter at the same term, to-wit: June 25, 1902, the court here in pursuance of the statute in such cases made and provided, certified to the Supreme Court of the United States certain questions or propositions of law, which certificate is as follows, to-wit:

United States Circuit Court of Appeals, Fourth Circuit.

THE BRUNSWICK TERMINAL COMPANY, a Corporation, *et al.*, Appellants,
versus
THE NATIONAL BANK OF BALTIMORE, Appellee. } No. 439.

Appeal from the circuit court of the United States for the district of Maryland.

Questions Certified to the Supreme Court of the United States by the Circuit Court of Appeals for the Fourth Circuit on the Case Stated.

The cause came into this court on appeal from the circuit court of the United States for the district of Maryland.

In the court below a bill was filed against the National Bank of Maryland, a national banking association doing business in Baltimore, Maryland, by the stockholders of the Brunswick State bank, a corporation of the State of Georgia, engaged under its charter in a general banking business. The bill sought to hold the defendant liable as a stockholder in the Brunswick State bank, which had become absolutely insolvent to an amount, after exhausting its assets, greatly in excess of its capital stock. The answer denied all liability.

The action was brought under the provisions of the statute law of Georgia, to-wit: section 9 of the act incorporating the Brunswick State bank, which is as follows:

39 "Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders in addition thereto shall be individually liable, equally and ratably and not one for another, as sureties to the creditors of such corporation for all contracts and debts of said corporation to the extent of the amount of their stock therein, at the par value thereof respectively, at the time the debt was created, in addition to the amount invested in such shares."

And also section 1496 of the Code of Georgia, as follows:

"When a stockholder in any bank or any other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable, provided he shall give notice once a month for six months of such transfer immediately thereafter in

two newspapers in and nearest the place where such institution shall keep its principal office."

The cause was heard and determined on the statement of facts following, that is to say:

"For the purpose of the trial and determination of this cause (all rights of appeal being reserved) the parties hereto agree upon the following as a statement of the facts in the case to be offered in lieu of other proof; reserving to either party, however, the right to refer to any laws or statutes of the State of Georgia germane to the cause, viz:

"That the Brunswick State bank was a corporation chartered, organized and existing under the laws of the State of Georgia, and was engaged in the general banking business in that State; that on or about the 30th day of May, 1893, William M. Wiggins and others, alleging themselves to be creditors of said Brunswick State bank, filed their petition in the superior court of Glynn county, Georgia, against said bank, alleging that it was insolvent, and praying for the appointment of a receiver to take possession of its assets, and administer them, and on the 29th day of June following the court decreed that the bank was insolvent and appointed a permanent receiver for the purposes stated; that the State of Georgia and Glynn county were, under the laws of Georgia, preferred creditors, and the assets obtained by the receiver as the assets of the bank were exhausted in the payment of these preferred claims and the costs of litigation, and nothing was left for the payment of other creditors of the bank; that the following persons are creditors of the said Brunswick State bank in the amounts stated in connection with their names, and were originally parties plaintiff in said cause, or having become such subsequently, that is to say: Here follow the names of creditors, amounts due to them and when created.

40 "That the defendant is a national bank, chartered, organized and conducting a business of a bank at the city of Baltimore, in the State of Maryland, under the provisions of the statutes of the United States in relation to national banks and their operation.

"That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of ten thousand dollars ($10,000.00), endorsed by the copartnership firm of Lloyd & Adams, and by W. A. Cunningham, and received, together with the note, as the collateral security for its payment one hundred and ten (110) shares of the capital stock of said Brunswick State bank of the par value of one hundred dollars ($100.00) per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State bank, on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity, and the defendant being under obligation to return the stock, the pledge being at an end and the pledgor entitled to its return, re-transferred the stock on the books of said

Brunswick State bank by direction of the pledgor, and the said transfer was fully completed on the books of the said bank on or before the 20th day of October, 1890, but no notice by publication of the fact of said re-transfer was given by the defendant; that the defendant never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the Brunswick State bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof.

"That the indebtedness of said Brunswick State bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date, and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State bank as a stockholder.

"It is agreed that the court may draw inferences from any of the foregoing facts to the same extent as if the facts had been proven by means of witnesses."

It further appears that in 1894, Acts of Legislature of Georgia 1894, page 76, Civil Code, sec. 1888, an act was passed by the General Assembly of that State declaring that "whenever a stockholder in any bank or other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability for such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer."

The court below dismissed the bill, holding that the
41 defendant was not liable to any of the complaining creditors, because it had transferred its stock on October 20, 1890, and none of their claims accrued before the year 1893. The court did not consider the other ground urged by the defendant, that being a national bank it could not become purchaser of shares in another corporation, and if it sought to do so, it could not be held liable on such stock. (Concord First Nat. Bank *vs.* Hawkins, 174 U. S., 365.)

At the hearing we were referred to decisions of the supreme court of Georgia, Lane *vs.* Morris, 8 Ga., 468; Thornton *vs.* Lane, 11 Ga., 49; Force *vs.* Dahlonega Co., 22 Ga., 86; Mason *et al. vs.* Force, 30 Ga., 99, as well as two decisions invoking construction of the charter of this bank, to wit: Brobston *vs.* Downing, 95 Ga., 505; Chatham Bank *vs.* Brobston, 99 Ga., 801. The result of these decisions is summed up in the case last quoted, as follows:

1. The decisions of this court in the cases of Brobston *vs.* Downing, and *vice versa*, 95 Ga., 505, 22 S. E., 277, and Brobston *vs.* Bank, *id.*, upon a review thereof, are affirmed.

2. Where the charter of a bank imposes on all of its stockholders personal liability to its creditors, such liability attaches as well to those who acquire a complete legal title to stock of the bank, by having the same transferred to them as collateral security for debts due by the transferrers, as to those who purchase such stock outright.

3. Under the charter of the Brunswick State bank, and the general rules of law applicable thereto, a stockholder is individually liable for his *pro rata* part of the corporation debts created before he acquired his shares of stock by transfer, as well as for a like part of those created during his ownership of the shares.

4. A stockholder in that bank is also liable to the same extent upon debts of the corporation created after he transferred his shares, unless he gave notice of the transfer as prescribed in section 1496 of the code.

Being divided and in doubt, this court respectfully certifies these questions to the Supreme Court, and asks its construction and advice thereon:

1. Is this question of the liability of a stockholder of this bank one of general law, or must we follow without question the decisions of the supreme court of Georgia thereon?

2. When shares in another corporation are transferred into the name of a national banking association, is there a presumption, and consequent notice to the world, that such shares are held
42 by such national banking association in some other capacity and not as owner thereof?

3. If a national banking association causes shares in another corporation to be transferred into its own name, is it estopped from setting up the invalidity of such a transaction?

Witness our hands this 25th day of June, 1902.

CHARLES H. SIMONTON,
Circuit Judge.
EDMUND WADDILL, JR.,
District Judge.
WM. H. BRAWLEY,
District Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true copy of the original certificate of questions or propositions of law to the Supreme Court of the United States in the therein entitled cause filed and now remaining of record in the said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the United States circuit court of appeals for the fourth circuit, at Richmond, on this 5th day of July, A. D. 1902.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th Ct.

43 Afterwards at the same term, to-wit: July 9, 1902, a duly certified transcript of the said certificate was transmitted to the Supreme Court of the United States.

And afterwards, towit, on the 15th day of December, 1903, the said Supreme Court of the United States issued its writ of certiorari to this court commanding that the record and proceedings in said cause be sent up to that court, which said writ of certiorari is annexed hereto.

Order to Transmit.

Thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating be transmitted to the Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

HENRY T. MELONEY, *Clerk.*

44 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Fourth Circuit,* } ss:

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true copy of the entire record and proceedings in the therein entitled cause as the same remains upon the records and files of the said circuit court of appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the said United States circuit court of appeals for the fourth circuit, at Richmond, this 16th day of December, A. D. 1903.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th C't.

C. M. D.

45 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fourth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Brunswick Terminal Company *et al.*, are appellants and The National Bank of Baltimore is appellee, No. 439, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the district of Maryland, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Su-
46 preme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifteenth day of December, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

47 [Endorsed:] File No. 18,608. Supreme Court of the United States. No. 88, October term, 1903. The Brunswick Terminal Co., *et al.*, *vs.* The National Bank of Baltimore. Writ of certiorari. The execution of the within writ appears from the schedules annexed hereto. Henry T. Meloney clerk U. S. circuit court of appeals fourth circuit. Dec. 16, 1903.

48 [Endorsed:] File No. 18,608. Supreme Court U. S., October term, 1903. Term No. 88. The Brunswick Terminal Co. *et al.* *vs.* The National Bank of Baltimore. Writ of certiorari and return. Filed Dec. 18", 1903.

United States Circuit Court of Appeals,

FOURTH CIRCUIT.

No. 439.

THE BRUNSWICK TERMINAL COMPANY,
A CORPORATION, ET AL.,
APPELANTS,

versus

THE NATIONAL BANK OF BALTIMORE,
APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Questions Certified to the Supreme Court of the United States By the Circuit Court of Appeals for the Fourth Circuit on the Case Stated.

The cause came into this court on appeal from the Circuit Court of the United States for the District of Maryland.

In the court below a bill was filed against the National Bank of Maryland, a national banking association doing business in Baltimore, Maryland, by the stockholders of the Brunswick State Bank, a corporation of the State of Georgia, engaged under its charter in a general banking business. The bill sought to hold the defendant liable as a stockholder in the Brunswick State Bank, which had become absolutely insolvent to an amount, after exhausting its assets, greatly in excess of its capital stock. The answer denied all liability.

The action was brought under the provisions of the statute law of Georgia, to wit: Section 9 of the act incorporating the Brunswick State Bank, which is as follows:

"Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders in addition thereto shall be individually liable, equally and ratably and not one for another, as sureties to the creditors of such corporation for all contracts and debts of said corporation to the extent of the amount of their stock therein at the par value thereof respectively, at the time the debt was created, in addition to the amount invested in such shares."

And also Section 1496 of the Code of Georgia, as follows:

"When a stockholder in any bank or any other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable, provided he shall give notice once a month for six months of such transfer immediately thereafter in two newspapers in and nearest the place where such institution shall keep its principal office."

The cause was heard and determined on the statement of facts following, that is to say:

"For the purpose of the trial and determination of this cause (all rights of appeal being reserved) the parties hereto agree upon the following as a statement of the facts in the case to be offered in lieu of other proof; reserving to either party, however, the right to refer to any laws or statutes of the State of Georgia germane to the cause, viz.:

"That the Brunswick State Bank was a corporation chartered, organized and existing under the laws of the State of Georgia, and was engaged in the general banking business in that State; that on or about the 30th day of May, 1893, William M. Wiggins and others, alleging themselves to be creditors of said Brunswick State Bank, filed their petition in the Superior Court of Glynn county, Georgia, against said bank, alleging that it was insolvent, and praying for the appointment of a receiver to take possession of its assets, and administer them, and on the 29th day of June following the court decreed that the bank was insolvent and appointed a permanent receiver for the purposes stated; that the State of Georgia and Glynn county were, under the laws of Georgia, preferred creditors, and the assets obtained by the receiver as the assets of the bank were exhausted in the payment of these preferred claims and the costs of litigation, and nothing was left for the payment of other creditors of the bank; that the following persons are creditors of the said Brunswick State Bank in the amounts stated in connection with their names, and were originally parties plaintiff in said cause, or having become such subsequently, that is to say: Here follow the names of creditors, amounts due to them and when created.

"That the defendant is a national bank, chartered, organized and conducting a business of a bank at the city of Baltimore, in the State of Maryland, under the provisions of the statutes of the United States in relation to national banks and their operation.

"That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of ten thousand dollars ($10,000.00), endorsed by the copartnership firm of Lloyd & Adams, and by W. A. Cunningham, and received, together with the note, as the collateral security for its payment one hundred and ten (110) shares of the capital stock of said Brunswick State Bank of the par value of one hundred dollars ($100.00) per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State Bank, on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity, and the defendant being under obligation to return the stock, the pledge being at an end and the pledgor entitled to its return, re-transferred the stock on the books of said Brunswick State Bank by direction of the pledgor, and the said transfer was fully completed on the books of the said bank on or before the 20th day of October, 1890, but no notice by publication of the fact of said re-transfer was given by the defendant; that the defendant never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the Brunswick State Bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof.

"That the indebtedness of said Brunswick State Bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date, and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State Bank as a stockholder.

"It is agreed that the court may draw inferences from any of the foregoing facts to the same extent as if the facts had been proven by means of witnesses."

It further appears that in 1894, Acts of Legislature of Georgia 1894, page 76, Civil Code, Sec. 1888, an act was passed by the General Assembly of that State declaring that "whenever a stockholder in any bank or other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability for such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer."

The court below dismissed the bill, holding that the defend-

ant was not liable to any of the complaining creditors, because it had transferred its stock on October 20, 1890, and none of their claims accrued before the year 1893. The court did not consider the other ground urged by the defendant, that being a national bank it could not become purchaser of shares in another corporation, and if it sought to do so, it could not be held liable on such stock. (*Concord First Nat. Bank* vs. *Hawkins,* 174 U. S., 365.)

At the hearing we were referred to decisions of the Supreme Court of Georgia, *Lane* vs. *Morris,* 8 Ga., 468; *Thornton* vs. *Lane,* 11 Ga., 49; *Force* vs. *Dahlonega Co.,* 22 Ga., 86; *Mason et al.* vs. *Force,* 30 Ga., 99, as well as two decisions invoking construction of the charter of this bank, to wit: *Brobston* vs. *Downing,* 95 Ga., 505; *Chatham Bank* vs. *Brobston,* 99 Ga., 801. The result of these decisions is summed up in the case last quoted, as follows:

1. The decisions of this court in the cases of *Brobston* vs. *Downing,* and *vice versa,* 95 Ga., 505, 22 S. E., 277, and *Brobston* vs. *Bank, Id.,* upon a review thereof, are affirmed.

2. Where the charter of a bank imposes on all of its stockholders personal liability to its creditors, such liability attaches as well to those who acquire a complete legal title to stock of the bank, by having the same transferred to them as collateral security for debts due by the transferrers, as to those who purchase such stock outright.

3. Under the charter of the Brunswick State Bank, and the general rules of law applicable thereto, a stockholder is individually liable for his *pro rata* part of the corporation debts created before he acquired his shares of stock by transer, as well as for a like part of those created during his ownership of the shares.

4. A stockholder in that bank is also liable to the same extent upon debts of the corporation created after he transferred his shares, unless he gave notice of the transfer as prescribed in section 1496 of the Code.

Being divided and in doubt, this Court respectfully certifies these questions to the Supreme Court, and asks its construction and advise thereon:

1. Is this question of the liability of a stockholder of this bank one of general law, or must we follow without question the decisions of the Supreme Court of Georgia thereon?

2. When shares in another corporation are transferred into the name of a national banking association, is there a presumption, and consequent notice to the world, that such shares are held

by such national banking association in some other capacity and not as owner thereof.

3. If a national banking association causes shares in another corporation to be transferred into its own name, is it estopped from setting up the invalidity of such a transaction?

Witness our hands this 25th day of June, 1902.

CHARLES H. SIMONTON,
Circuit Judge.
EDMUND WADDILL, JR.,
District Judge.
WM. H. BRAWLEY,
District Judge.

Clerk's Certificate.

UNITED STATES OF AMERICA:

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the aforegoing is a true copy of the original certificate of questions or propositions of law to the Supreme Court of the United States in the therein entitled cause filed and now remaining of record in the said United States Circuit Court of Appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereto set my hand and affix the seal of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, on this 5th day of July, A. D. 1902.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals, 4th C't.

Supreme Court of the United States.

OCTOBER TERM,

No. 88

THE BRUNSWICK TERMINAL COMPANY,
A CORPORATION, ET AL.,

APPELLANTS,

versus

THE NATIONAL BANK OF BALTIMORE,

APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR APPELLANTS.

HENRY W. WILLIAMS,
C. P. GOODYEAR,
Attorneys for Appellants.

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THE BRUNSWICK TERMINAL COMPANY AND OTHERS.
vs.
THE NATIONAL BANK OF BALTIMORE.
No. 88.

IN THE
Supreme Court
OF THE
United States.

This case comes up from the United States Circuit Court of Appeals for the Fourth Circuit, upon the certificate from such Court, asking the construction and advice of this Court upon certain questions certified.

STATEMENT OF FACTS.

The Bill of Complaint in this cause was filed in the Circuit Court of the United States for the District of Maryland on January 14, 1898, by the Brunswick Terminal Company and others, creditors of the Brunswick State Bank, a corporation chartered by the State of Georgia, which failed and was declared insolvent in May, 1893.

The object of the bill is to enforce in behalf of the creditors of said Brunswick State Bank against the National Bank of Baltimore, an alleged stockholder, a statutory liability equal to the par value of the stock in the Brunswick State Bank at one time standing in the name of said National Bank of Baltimore.

The case was first heard on a demurrer to that part of the defendant's answer which set up the plea of limita-

tions under the Maryland Statute. The Circuit Court overruled the demurrer, and on the appellant's appeal to the Circuit Court of Appeals for the Fourth Circuit that decision was reversed, and it was held that the Georgia Statute, by which suits to enforce rights accruing under acts of incorporation may be brought within twenty years, was applicable, and that the Maryland Statute was not to be applied.

Brunswick Terminal Co., et al, vs. The National Bank of Baltimore, 99 Fed. Rep., 635.

The defendant thereupon moved the Supreme Court of the United States to issue the writ of certiorari, which motion was duly denied.

National Bank of Baltimore vs. Brunswick Terminal Co., 178 U. S., 611.

The case was then heard on the merits by the Circuit Court upon bill, answer and an agreed statement of facts, and on December 18, 1901, after full argument, said Court (Morris, D. J.,) filed its opinion in favor of the defendant, and on December 20, 1901, signed a decree dismissing the bill with costs.

An appeal was then taken by the plaintiffs to the Circuit Court of Appeals for the Fourth Circuit, which said Court, upon hearing said appeal, certified the case to this Court, the facts of the case being fully set out in the said certificate of the Circuit Court of Appeals.

ASSIGNMENT OF ERRORS.

In the appeal to said Circuit Court of Appeals the appellants assigned the following errors:

1. That the United States Circuit Court erred in dismissing Bill of Complaint of the appellant.

2. That the said Court erred in rendering a decree against appellants in said case upon the proceedings and agreed statement of fact.

ARGUMENT.

The first question certified by the Circuit Court of Appeals is:

I. "Is this question of the liability of a stockholder of this bank (Brunswick State Bank) one of general law, or must we follow without question the decision of the Supreme Court of Georgia?"

The decision of the Supreme Court of Geergia referred to is that of Chatham Bank vs. Brobston, 99 Ga., 801, the head notes to which said decision, in so far as they bear upon this case, are fully set forth in the certificate of the Court of Appeals on page 4. The Court of Appeals also refers to certain decisions of the said Supreme Court of Georgia leading up to this final decision, which said decisions we will set forth as fully as appears necessary for the purposes of this case.

Lane vs. Morris, 8 Ga., 468.

This was a suit at law by a creditor of the Planters' and Mechanics' Bank of Columbus against one Morris, a stockholder in said bank, upon his liability as a stockholder under the charter thereof. Such charter provided, (see page 474,) "the persons and property of the stockholders shall be pledged and held bound in proportion to the amount of shares, and the value thereof, that each individual or company may hold in said bank, for the ultimate redemption of the bills and notes issued by said bank, in the same manner as in any action of debt, and no stockholder shall be relieved from such liability by sale of his stock until he shall have caused or have given sixty days' notice in some public gazette in this State."

The Court says, (Justice Lumpkin) page 474: "All then, whoever were stockholders, are liable to bill and note holders, unless they have been discharged in the manner prescribed by the Act as such is the plain, spoken and unmistakable language of the statute; and so ample was the security which the Legislature intended to provide, that even sale and notice is no protection, if within six months of the failure."

On page 475 the Court holds that in this particular case the notice published by the stockholder, Morris, was sufficient, and, therefore, that he was exempt from liability imposed. But the general doctrine is established in this case, that a stockholder of a bank remains a stockholder thereof as regards creditors, no matter whether such debts may have been incurred, before or after he may have transferred his stock upon the books of the corporation, unless he shall likewise have complied with the statutory requirement that such transfer should be advertised.

This, to be sure, was a case of a note holder, but the Court, evidently, disregards entirely the question as to when the note may have been issued and decides the case upon the general doctrine above cited.

Thornton vs. Lane, 11 Ga., 459.

This was a suit by the same Lane as in Lane vs. Morris, against another stockholder of the said Planters' & Mechanics Bank of Columbus, upon his statutory liability, as above set forth.

The Court, (Justice Lumpkin) in his opinion, pages 489 and 490, comments upon the elaborate character of the arguments in this case, and also upon the fact that a number of the points argued had been decided in the case of Lane vs. Morris, supra. and states that the reargument was only permitted on the ground that the previous hearing had not been before the full Court, and goes on to say: "We need not say, however, that when questions have been once decided by this Court, they are to be considered the law of the land, and respected and carried into full effect as such, the same as a statute of a State."

On page 505, the Court refers to the arguments of the Appellant that the only stockholders liable for the Bank's debts, (in this case its notes) were "those who were stockholders when the bills were issued, and who, notwithstanding the transfer of their stock, had failed to get re-

leased on the conditions prescribed by the Act," and while admitting that this rule in business corporations may be just and right, gives good and sufficient reasons why it is not the proper construction of the statute, summing up their entire opinion as follows, (page 506:) "But candor compels us to say that in our judgment, the fallacy of the proposition consists in the assumption that the same meaning is to be attached to the term stockholder, wherever it occurs in the Act. The true distinction is this, the unlocking of which, has created much confusion in this argument. The same individuals may be stockholders outside, but not inside, the corporations. As regards *third persons*, and the liability clause in the 11th section, all are stockholders pro hac vice, who were such and who have failed to get released in the manner prescribed by the charter." The entire principle contended for is contained in this statement; once a stockholder, always a stockholder, unless the transfer is advertised, as required by law.

Force vs. Dahlognea Co., 22 Ga., 86.

This also was a suit by a creditor of a corporation (here a manufacturing company) against a stockholder thereof, upon his statutory liability. The statutory liability in this case was defined by the Act of 1838, being the very Act applicable to the case at bar. The lower Court denied the liability of the defendant upon the ground that he had heretofore transferred his stock, but the Supreme Court reversed this judgment as follows, (page 91:) "And an issue was tendered by the plaintiff and refused by the Court, to establish the fact that he was not only one of the original stockholders, but continued to be such up to the time when the debt was contracted and suit instituted.

That Mr. Mason was one of the original stockholders is not denied. The Act of incorporation recites the fact that the charter was granted to him and others therein named. He made no attempt to say that he had ever

transferred his stock by the terms of the Act of 1838, to regulate the settlements between banking institutions of this State and to define the liability of stockholders who shall transfer their interest therein, or other institutions.

The second section of that Act declares that "whenever a stockholder in any bank or other corporation, etc.," (reciting in full section 1496 of the Code of Georgia.)

Under this act it would seem, the defendant is liable as a stockholder, unless he alleges and proves that he has discharged himself according to the provisions of this statnte."

This case decides the exact point in issue and with reference to ordinary debts of a manufacturing company.

Mason vs. Force, 30 Ga., 99.

This was the same case as the above in another form.

The Court (Mr. Justice Lyon) says, page 100: "Were the plaintiffs in error stockholders in the Dahlognea Company, are (and) liable as such for the debts of the Company?" This question was made in a case between the same parties in 22 Ga., 86, in which this Court held they were not only stockholders originally, for this fact appears in the charter, but they were liable as such for the debts, unless they could allege and prove that they had been discharged from such liability according to the provisions of the second section of the Act of December 29th, 1838, Cobb 112—that is, by a transfer of their stock and a publication thereof in two newspapers, or in the nearest place where the corporation kept its principal office, once a month for six months immediately after such transfer. The appellants did offer proof of the transfer of their stock in the Company, but they did not show or attempt to do so, that they had published notice of such transfer in the terms of the Act. The second section of the Act of incorporation of this company makes 'the private property of the stockholders bound for the payment of the debts of the Company.' The question

is *settled* that the appellants, as stockholders, are liable for the debts of the company."

The italics are ours.

Brobston & Co. vs. Downing.

Brobston & Co. vs. Chatham Bank, 95 Ga., 505.

These were suits by certain creditors of the Brunswick State Bank, being the same Bank involved in the case at bar, against certain stockholders thereof upon their statutory liability, as in this case.

The appellees in the action demurred upon several grounds, among others (being the 8th ground given), that the declaration did not allege at what time the debts of the several appellants were incurred.

The case is decided on the head notes by the Court (Chief Justice Beckey). The first head note (referring to this question) is as follows: "With or without a clause in the charter restricting the personal statutory liability of stockholders to the amount of stock at its par value at the time the debt in question was created, the liability exists and continues for any debt incurred by the corporation *at any time*, until the stockholder who claims to be exempt by reason of having sold and transferred his stock before the debt w s created, has given notice of such sale conformably with section 1496 of the Code." Justice Lumpkin concurring dubitante. The italics are ours, but it is respectfully submitted that it is evident that the whole point of this decision and the whole point of the doubt expressed by Justice Lumpkin was in the words italicized: "at any time."

The demurrer was on the ground that the declaration did not give the dates when the debts were incurred, and, of course, it followed from this that the debts might have been incurred before the appellees became stockholders at all, and it is respectfully submitted that this was really the only question before the Court, and the only question upon which Justice Lumpkin had any

doubt, for the reason that there never had been and was not in this case any dispute as to the fact, that a stockholder once a stockholder continued a stockholder as to creditors, until he transferred his stock in the manner provided by the statute; the only question before the Court, was whether or not this doctrine applied to debts incurred *before* the defendant became a stockholder. This is made especially plain by the next case.

Chatham Bank vs. Brobston, 99 Ga., 801.

This case is a review of the cases above cited. The head note is set forth (in so far as it bears in this case) in the certificate of the Circuit Court of Appeals.

The Court, says, page 803:

"In the cases of Brobston & Co., et al. vs. Downing, and same vs. Chatham Bank, 95 Ga., 505, this Court in effect decided that a stockholder in this bank was in fact liable for his pro-rata part of the debts of the corporation created *before* he became a stockholder, as well as for a like proportion of the indebtedness incurred by it while he held his stock. This decision controls the present case. Upon a review of it, duly allowed, Chief Justice Simmons and Justice Lumpkin are of the opinion that it should be affirmed; and Judge Gover, on this point of it, of necessity concurs in the judgment now rendered. He is, nevertheless, of the opinion that in dealing with the cases reported in 95 Ga., supra., the Court in so far as it held that a stockholder of this bank could be made liable for any debt created by it *before* he actually became a stockholder, misconstrued that portion of the bank's charter which is quoted above. If free to do so, he would hold that under the language just referred to, the individual liability of a stockholder of this corporation is limited to such debts only as were contracted *during* the time he was an owner of stock and up to the date when, relatively to such liability, he *legally* severed his connection with the corporation. *We all agree* that such owner, although he may have transferred his stock,

would still be bound under the above cited section of the Code, for whatever liability the charter fixed upon him, unless he gave the notice provided for by that section.

In 1894, an Act was passed by the General Assemby which materially modifies the law bearing upon this subject, in that it dispenses with any necessity for a stockholder, upon transferring his stock, to publish notice of the fact in order to discharge him from liability. That Act declares that 'whenever a stockholder in any bank or other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer.' Acts of 1894, page 76, Civ. Code, 1888. In view of the radical change thus made in the law, the difference of opinion which exists between the majority and the minority of the Court as constituted for the hearing of the cases now in hand is, apparently, of but little practical importance, save as affecting the result of the present litigation.

If another case should arise the decision of which would depend upon the question as to which we disagree, the whole matter would still be open to review by a bench of six justices. Accordingly, we have agreed among ourselves to let the present decision stand upon the head notes as announced, with the foregoing explanation of our reasons for not entering upon a discussion as to what should be the proper construction of the bank's charter now under consideration."

The italics are ours. The only question therefore in doubt was whether a stockholder was liable for debts created *before* he became a stockholder?

The position of the plaintiffs here has never been questioned by any Judge of the Supreme Court of Georgia.

The question, therefore, before this Court is not whether the Federal Courts are bound by a decision of the Supreme Court of Georgia upon the special right, rendered after the commencement of this litigation, but whether the Federal Courts are bound by the decision of such Court previously rendered and consistent with its previous decisions, interpreting a general law, and thus fixing the liability of stockholders of all corporations incorporated by the State. It is not the construction of the charter of the Brunswick State Bank that is attacked, but the construction by the Court of Section 1496 of the Code. The suit was instituted, contested, and, in regular course, went to the Supreme Court of the State, was determined by such Court, after due consideration, and determined, as far as residents of the State of Georgia are concerned, at least, adversely to the contention of the defendant. And now this Court is urged to reverse such decision with respect to non-resident stockholders, and thus relieve them from the liability imposed by the Statutes of Georgia, as interpreted by the Supreme Court upon residents of the State. The mere statement of the case would seem to refute itself.

Not relying for the moment upon the general doctrine that the Federal Courts will (except in certain well-determined cases hereinafter referred to) follow the decisions of the State Courts interpreting State statutes, every consideration of equity and justice requires that all the stockholders of any one corporation should be governed and controlled by the same law; that the liability of one stockholder should be the liability of all; that the rights of one should be the rights of all.

Stockholders of corporations have mutual rights and liabilities among themselves, and especially is this true with reference to this liability to creditors when a corporation becomes insolvent. To release one stockholder from liability is to increase the liability of the remainder, and thus to destroy that very principle of equality

which is the basis of the law controlling the relations of stockholders to each other and to the corporation. This consideration alone should control this case. It would be contrary to public policy to hold that the Federal Courts and the Courts in each State in the Union are at liberty to determine this question of statutory liability for themselves regardless of the decisions of the Supreme Court of the home State. Such holding in fact would throw the door wide open to fraud and injustice, as the Courts of each State would be only too willing, under such circumstances, to relieve their citizens from the liability imposed upon the resident stockholders, thus imposing upon such resident stockholders an unfair share of the burden of corporate debt.

The defendant (to avoid this doctrine) lays great stress upon the similarity between the charter of the Brunswick State Bank and section 5151 of the Revised Statutes of the United States, June 3rd, 1864, relating to the liability of stockholders in National Banks, but in fact such charter and such statute are as notable for the difference as for the similarity between them. But with all due respect, the appellants can not see that this similarity or dissimilarity, whichever may be more notable, has anything whatever to do with the case. It might well have been that the two statutes, one of Congress and one of the State of Georgia, were identical in terms, being copied verbatim, one from the other, but even in such case it is plain that if such statutes were construed by the Federal Courts with one effect and by the Courts of Georgia with another, that in such case the Federal Courts when construing the Georgia statute, would have to follow the decisions of the Courts of Georgia, while equally the Courts of Georgia when construing the Federal statutes would be compelled to follow the decisions of the Federal Courts. The rule establishing the binding effect of the decisions of the Federal and State Courts interpreting respectively

the Federal and State statutes (like all good rules) works both ways; the rule is applicable to Federal and State Courts alike, and, therefore, it follows that if the Federal Courts are not bound to follow the decisions of a State Court upon a question of statutory liability imposed by the statutes of that State, because in some respects such statutes are similar to the National Banking Act, then it equally follows that the State Courts would not be compelled to follow the decisions of the Federal Courts in the interpretation of the National Banking Act, for the reason that it was similar in some respects to a State statute imposing a like liability.

It is difficult, indeed, to follow the argument of the defendant in this respect.

Again the defendant seems to rely upon section 1888 of the Civil Code of the State of Georgia, (and, indeed, the Circuit Court of Appeals includes this section in its certificate), declaring that: "Whenever a stockholder in any Bank or other corporation is individually liable under the charter and should transfer his stock, he should be exempt from such liability for such transfer, unless such Bank or other corporation shall fail within six months from the date of such transfer"; this being in effect a repeal of section 1496 of the Code of Georgia relied upon by the plaintiffs in this case, but as such Act was passed in 1894 and the liability of the defendant in this case to the plaintiffs became vested prior to that date, it is difficult to see the bearing of this particular statute of the State of Georgia.

It may be suggested that it was enacted because the Supreme Court of the State of Georgia put a construction upon section 1496 not satisfactory to the Legislature, nor just to the stockholders of the various State corporations effected thereby; but this very suggestion itself answers the argument of the defendant, for it contains an admission that under the statute of the State of

Georgia in effect down to 1894, the defendant in this case became liable to the plaintiffs as claimed, and that it was necessary to repeal such statutes in order to prevent subsequent stockholders of other corporations becoming liable under similar circumstances in the future.

As heretofore suggested, there have been, cases where the Federal Courts have refused to follow the decisions of State Courts interpreting their own statutes, but the limitations of the powers of the Federal Courts in this respect are fixed and determined, and such limitations cannot be overridden without great danger to the amity and comity existing between the various Courts of the country.

It has been held by this Court that it will not be bound by the decision of a State Court determining a right under a statute, if that very right is at that time before the Federal Courts for determination.

The case of Burgess vs. Seligman, 107 U. S., 33, goes as far as this Court will probably ever go in this connection. That also was a question of the statutory liability of stockholders, and the question before the Court was the interpretation of a statute of Missouri. After decision in the case by the Circuit Court of the United States, the Supreme Court of Missouri in a case involving the same question, determined it differently, and this determination of the Supreme Court of Missouri was pressed upon the attention of this Court. Mr. Justice Bradley, page 34, says: "We do not consider ourselves bound to follow the decision of the State Court in this case. When the transactions in controversy occurred, and when the case was under the consideration of the Circuit Court, no construction of the statute had been given by the State tribunals contrary to that given by the Circuit Court. The Federal Courts have an independent jurisdiction in the administration of State laws, co-ordinate with and not subordinate to that of the State Courts, and are bound to exercise their own judgment

as to the meaning and effect of those laws. The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State Constitutions and Statutes."

Similarly in Carroll County vs. Smith, 111 U. S., 556, this Court was asked to follow a decision of the Supreme Court of Mississippi determining the same question but pronounced after the controversy arose. The Court, Mr. Justice Mathews, refused so to do relying upon Burgess vs. Seligman, supra.

The doctrine of Burgess vs. Seligman, is also well stated in Sandford vs. Poe, 16 C. C. A., 30[illegible]

But this whole question has been before this Court very lately in the important case of the Security Trust Company vs. Black River National Bank, decided November 1st, 1902, and reported in 187 U. S. page 211. The suit was originally brought in the Circuit Court of the United States for the District of Minnesota, and the defense was that by the statute of Minnesota as construed by the Supreme Court of such State, the claim was barred by the statute of limitations applicable to suits against administrators, and this Court in its opinion sets out fully the decision of the Supreme Court of Minnesota so determining, to-wit: the case of the State ex rel. Meteson vs. Ramsey County Probate Court, 84 Minn., 289; which decision of the Supreme Court of Minnesota, however, was severely criticised in the brief of the appellee in error for reasons much more substantial, it is submitted, than those advanced by the counsel

for the appellee in this case. This Court speaking by Mr. Justice Shiras, on page 226 states such criticism as follows: "Some criticism is made in the brief of the appellee in error of the decision of the Supreme Court of the State of Minnesota in this case; that the issue was feigned and an imposition upon the Supreme Court, and that the purpose of the decision was to forestall the decision of this Court."

Certainly, this suggestion would have been sufficient reason for this Court to have gone behind the decision of the Supreme Court of Minnesota if it considered that it had the legal right to do so. And this Court goes on to say immediately after stating this criticism, that: "If, indeed, the judgment of the Supreme Court in that case were relied upon as adjudging a case which had already passed into judgment in the Circuit Court of the United States, we might readily agree, as urged by the defendant in error, that the decision of the Supreme Court of Minnesota "should receive little, if any, weight, by this Court in the consideration of this case." But that decision is cited and relied on by the plaintiff in error, not as an adjudication of the facts in controversy here, but as an interpretation of the statutes of the State. Cases may be found of decisions made by a State Supreme Court, even in exposition of State statutes, *after* the institution of litigation in a Federal Court, wherein this Court has refused to follow such a decision, if in it the State Court has departed from its previous decisions, which were in force and relied upon by the Federal suitor." Burgess vs. Seligman, 107 U. S., 33, 27 L. ed. 365, 2 Sup. Ct. Rep. 10; Carroll County vs. Smith, 111 U. S., 556, 28 L. ed. 517, 4 Sup. Ct. Rep., 539.

"Here, however, the Supreme Court of Minnesota, in its last opinion, did not depart from or modify its previous decisions on the subject. On the contrary it based its reasoning and conclusions upon its frequent decisions."

"Nor are we permitted on the record in that case to impute to the parties therein an attempt to mislead the Court or to improperly invoke its jurisdiction. The case seems to have gone before the Probate Court, the District Court, and the Supreme Court, in the usual course of procedure, and the decision finally rendered by the Supreme Court must be received by us as a valid exposition of the law."

"The conclusion to which we are brought, by an examination of the statutes of the State of Minnesota and of the decisions of the Courts of that state in construing and applying them, is, that had a suit against an administrator of an estate been brought in the Courts of that State, after the expiration of the period limited by the order of the Probate Court, in which creditors may present claims against the deceased for examination and allowance, and after an allowance of the administrator's final account and a final decree of distribution, such suit could not have been maintained."

It will be noted that as the Court refers to the case of Burgess vs. Seligman and Carroll County vs. Smith, supra., without comment, this opinion may be taken as a re-statement by the Supreme Court of its decisions in such cases. It is respectfully submitted, therefore that such cases cannot be extended beyond the statement as above.

It is to be further noted that this Court by italicizing the word "after" in the above excerpt, limits the decisions not binding upon the Federal Courts, to those made *after* the institution of litigation in a Federal Court.

In the case at bar as in such case, the decisions of the Supreme Court of Georgia relied upon are not mere adjudications of the facts in controversy in this cause, but are interpretations of a general statute of the State of Georgia. The statute interpreted, (the interpretation of which is disputed by the appellee) is not the charter of the Brunswick State Bank, of which this appellee was a

stockholder, but is section 4196 of the Code of Georgia; and such statute of the State of Georgia was applicable not only to the Brunswick State Bank and to the stockholders thereof, including the defendant, but was applicable to every stockholder of every Georgia corporation, and, the Supreme Court of the State of Georgia, like the Supreme Court of Minnesota "in its last opinion did not depart from or modify its previous decisions on the subject. On the contrary it based its reasons and conclusions upon its frequent recent decisions."

As seen in the review of Georgia cases the identical principles involved in this case have been decided in the early history of the Supreme Court of the State in the Columbus Bank cases, in which a provision identical in principle was embodied in each of the charters for the protection of bill holders of the Bank, that all stockholders would remain liable until they had published notice of transfer of the stock, the only difference being as to the length of notice, etc. These cases came before the Supreme Court of Georgia the first time in Lane vs. Morris, 8 Ga., 468, in which the Court decided the identical principle laid down in Brobston vs. Downing, 95 Ga., 505, also in 10 Ga., 162, Lane vs. Morris. In 11 Ga., 459, Thornton vs. Lane, an appeal was made to the Supreme Court to review its rulings in the two cases above recited. Some of the best lawyers of that time in Georgia were engaged on both sides. The Chief Justice of the Court was Judge Lumpkin, conceded to have been one of the ablest jurists Georgia has ever produced, and the identical cases laid down in the Brunswick State Bank cases were reaffirmed, namely, that all stockholders remained stockholders, notwithstanding a transfer of their stock, as to all liability which the section in relation to publication is intended to protect, until such time as they had complied with the law of notice by publication. This same principle is ruled in 16 Ga., 217, Lane

vs. Harris. It was again ruled in the case of Force Bros. & Co. vs. Dahlonega L. & M. Co., 22 Ga., 86, and upon the identical Code section, *1496 of the Code of 1882*, involved in this case, by Judge Lumpkin, who had decided the Columbus Bank cases before referred to. The same case in a different form, in Mason & Field, Jr., vs. Force Bros. & Co., and others, 30 Ga., 99, was decided by Judge Lyon, of the Supreme Court of Georgia, upon the identical principle laid down in Brobston vs. Downing, and Chatham Bank vs. Brobston, above referred to.

Here is an unbroken line of authority from the first decision in 8 Ga., 468, down to these decisions in 95 Ga., and 99 Ga., sustaining the principles contended for, namely, that a stockholder cannot relieve himself from liability by a mere transfer of his stock, or cease to be a stockholder by the mere transfer of his stock, but remains liable, not only to creditors whose claims were created prior to such transfer, but to all creditors of the corporation until he has given the notice required by law of such transfer. This being the settled law of Georgia, we contend that Judge Morris was in error in dismissing this bill, because by an unbroken line of decision of Circuit Courts and Supreme Courts of the United States, such construction by a Court of last resort of a State, of liability created by statute, is binding upon him. And especially is this true since in view of this history of this doctrine as established in Georgia, it is respectfully suggested, that the cases cited by the Circuit Court and the counsel for the appellee have no application to the case at Bar. In the case of the Central Railway & Banking Co. vs. Wright, 164 U. S., 327, the Supreme Court refused to follow the head note of the Georgia case simply and only because the three Judges "each gave a different reason for his opinion," the only opinion that sustained the head note being that of Mr. Justice Warner, with regard to which the Supreme

Court says: "If the opinion of Mr. Justice Warner had been the opinion of the Court, it would have been difficult to avoid a conclusion that this was the construction of the charter which would have been binding upon the Federal Courts, as it held in effect that the law taxing the property of the Railway impaired the obligation of the contract contained in the charter, but his opinion was not the opinion of the Court, but of only one of its three members; the opinion of the Court was simply that the action of the Court below should be reversed for reasons in which no two ot its members concurred." In the Georgia cases above referred to, the Court established the doctrine contended for, and without dissent as to this particular doctrine.

The other cases cited by the Court and counsel below have each one reference to decisions of the State Courts not in any way enforcing a doctrine of law or a previous interpretation or construction of a statute, but merely determining the rights of other parties growing out of the same subject matter and in each one of these cases the Supreme Court expressly states that if similar decisions had been rendered by the State Courts establishing this doctrine of law prior to the accruing of the causes of action in question, that the U. S. Courts would have been bound thereby."

In addition, there are two late cases by this Court; one re-affirming the general doctrine, and one re-stating the exception thereto as established by Burgess vs. Seligman. In Manley vs. Park, decided January 5th, 1903, 187 U. S., 547, Mr. Justice White, speaking for the Court, says: (page 551).

"The first and second propositions, it is manifest, simply invite a consideration of the constitution and laws of the State of Kansas; and consequently the construction adopted by the Supreme Court of Kansas of the pertinent provisions of such constitution and laws is

binding upon this Court as a decision upon a matter of purely local law, not presenting a Federal question."

This was a decision of the Supreme Court of Kansas interpreting a general statute of such State, and this Court, therefore, following precedent, held that it was bound thereby.

As already noted, the decisions of the Supreme Court of Georgia attacked by the defendant, are decisions interpreting not the charter of the Brunswick State Bank, but the statute of the State of Georgia controlling the general liability of stockholders in corporations.

The distinction between general decisions and decisions affecting special rights, has been consistently maintained by this Court in all cases.

The other case referred to was with reference to the interpretation of a stature of the State of North Carolina authorizing the issue of certain bonds, and here (Board of Commissioners Stanley County vs. Coler, decided June 1st, 1903, 190 U. S., 437,) this Court refused to follow the decision of the Supreme Court of the State of North Carolina which decision did not decide any question of general law, but was rendered solely with reference to the specific right in question; quoting with approval the exception to the general doctrine as set forth in Burgess vs. Seligman, as follows: (page 445).

"So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision of the State tribunals, the Federal Courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State Courts *after* such rights have accrued." The italics are ours.

It is sufficient, therefore, with reference to this matter, to again note the fact that the doctrine of law contended for was established by the Supreme Court of Georgia in a line of cases prior to and having no relation to the

cause of action in this case; prior, indeed, to the incorporation of the Brunswick State Bank.

The second question certified by the Circuit Court of Appeals is as follows:

2. When shares in other corporations are transferred into the name of a national banking association, is there a presumption, and consequently notice to the world, that such shares are held by such national banking association in some other capacity, and not as owner thereof?

It is really difficult to understand exactly what the Circuit Court of Appeals means by this question. How in the world a holding in the name of a bank is to be notice to all persons that said bank was not the holder of the stock in question cannot be imagined. On the contrary, it is evident that a holding of stock in the name of a person or corporation is a direct statement to all the world that said person is the owner of said stock and that therefore the said bank would be estopped from denying such presumption unless the party claiming thereunder, in some way, had notice that the holding was not as it purported to be. The question was put this way by the Court we assume on account of the language used by this Court in Robinson vs. Southern National Bank, 180 U. S., 309.

In such case this Court, in referring to the wellknown cases of California Bank vs. Kennedy, 167 U. S., 362, and Concord Bank vs. Hawkins, 174 U. S., 364, holding that it was not competent for national banks to invest any portion of their capital permanently in the stock of another corporation, and that they were not estopped from setting up such want of power against suits to enforce liability for assessments made by the Comptroller of the Currency, says:

"While not disposed, as at present advised, to push "the principle of this case so far as to exempt such

"banks from liability as other shareholders, where they "have accepted and hold stock of other corporations as "collateral security for money advanced (a proposition "which we withhold from decision), we think there is "a presumption in such case againt any intention on the "part of the lending bank to become owner of the col- "lateral shares."

"This was the view taken in the case of Baker vs. "Old National Bank, 86 Fed. Rep., 1006, and Frater vs. "Old National Bank, 103 Fed. Rep., 391, where it was "held, after full consideration, that it is only in clear "cases that a pledgee, on the ground of estoppel, can "be subjected to liability for an assessment on national "bank stock instead of the owner, upon whom the legal "obligation rests, and that where stocks stood upon the "books of a bank in the name of a person as cashier etc." The whole point of these cases was that the stock had never been transferred to the name of the Bank.

Likewise in the case of Robinson vs. Southern National Bank, the stocks had never been transferred into the name of the Southern National Bank. The entire question before the Court was whether in spite of such fact, that is to say, in spite of the fact that the Southern National Bank had never been a stockholder of record of the State National Bank of Vermont, the Southern National Bank could be held liable as a stockholder thereof. The facts were that the Southern National Bank, upon default in the payment of its loan, bid in the stock of the State National Bank of Vermont at a nominal price, and, as the Court says, page 306:

"The important inquiry is whether by the mere act "of bidding in the stock at a nominal price the Southern "National Bank of New York must be regarded as having "submitted itself to liability as the real owner thereof", it further appearing from the facts that the said purchase and sale had been subsequently set aside and the stock had never been in fact transferred to the Southern National

Bank. Whereupon the Court says, (318-309:) "It is "admitted that Curtis has always been and is liable, as "the registered owner of the stock; that at no time, nor "in any way, has the Southern National Bank held itself "out to the State National Bank of Vermont, or to its "creditors, as a shareholder therein; and it is admitted "that the Southern National Bank never received divi- "dends and never voted on said stock."

The only question before the Court, therefore, in such case was whether the Southern National Bank was in fact the owner of the stock in question, having taken it as collateral security but never having held the record title, and in the absence of any satisfactory evidence that the said bank had become the legal owner thereof by legal purchase the Court held that there was "a pre- "sumption in such case against any intention on the part "of the lending bank to become an owner of the collat- "eral shares." There is not even any analogy between such case and this.—This Court did not mean to say that in cases of this character, to wit, cases where the bank in question had transferred the stock into its own name, the presumption of ownership would not arise because, as already suggested, such inquiry would seem to be almost foolish, but merely decided that *in the absence of* such transfer of the stock upon the books of the Company, there was a presumption against the intention of the bank to hold such stock as owner. In fact the Court held that the registered holder, Custis, was of necessity liable. The question involved was not that of record but of actual ownership. It is respectfully submitted, therefore, that this second question certified by the Circuit Court of Appeals was founded upon a misunderstanding of the language of this Court as above set forth, and has no application whatever to the case at bar.

The third question certified is as follows:

3. If a national banking association causes shares in other corporations to be transferred to its own name, is it estopped from setting up the invalidity of such a transaction?

It is respectfully submitted that the validity of a transfer of the stock under such circumstances has never been questioned by any Court, and therefore the question of estoppel with reference to the invalidity of such transaction, being a valid transaction, cannot arise. It is perfectly true that this Court in a number of cases affirming decisions of other Federal Courts has held, and such proposition has never been denied, that national banks have no power to permanently invest their funds in the stock of other corporations.

California Nat'l Bk. vs. Kennedy, 167 U. S., 362;
First Nat'l Bk. vs. Hawkins, 174 U. S., 364;
Robinson vs. Southern Nat'l Bk., 180 U. S., 309-10.

But the power of such banks with reference to taking stock in their own name for the better security of loans has been determined by this Court exactly to the contrary and such power distinctly upheld. In Germania National Bank vs. Case, 99 U. S., 628, a case in every way similar to the one above, except that it was a case between two national banks, and therefore, one, in which the contention of the respondent if it had any merit at all, would have had application, the Court, Justice Strong, finally and absolutely determined not only, (which has never been denied), that a National Bank has a right to transfer into its own name stock which it holds as collateral security for a loan, but further that even under the National Banking Act, such absolute transfer without qualification, is such a holding out as would estop such Bank from denying its statutory liability as a stockholder. The Court says: (page 631.)" It is thoroughly established that one to whom stock has been transferred in pledge as

collateral security for money loaned and who appears on the books of the corporation as the owner of the stock, is liable as a stockholder for the benefit of creditors," and this finding is absolutely necessary to the decision in the case. This case has never been either criticised or qualified by any subsequent decision of the Supreme Court of the U. S., or in any wise referred to except as an authority, by any Court, while it has been affirmed in

Anderson vs. Phil. Warehouse Co,, 111 U. S., 482, and

Pauly vs. State Loan Co., 165 U. S., 616,

in which latter case the Court, Mr. Justice Harlan, referring to Anderson vs. Warehouse Co., Supra., says: "This Court in that case recognizes it to be well settled that one who allows himself to appear on the books of a National Bank as an owner of its stock is liable to creditors as a shareholder, whether he be in fact the absolute owner or only a pledgee." * * * "But the Court observed 'it has never to our knowledge been held that a mere pledgee of stocks is chargeable when he is not registered *as owner*."

This entire question is well considered by Mr. Leonard Jones, in his work on "Pledges and Collateral Securities, "2nd Ed. (1901) Chap. 12 beginning at page 463," wherein he lays down the doctrine as follows: "In general it may be said that one to whom a certificate of stock has been issued absolutely, but in fact as collateral security, assumes the liabilities of a stockholder so far as concerns the creditors of the corporation, and must bear all the burdens that relation imposes" and further, page 464, "A pledgee in whom the legal ownership appears to be is subjected to the same liabilities any other stockholder is subject to unless exempted by statute."

So well established is this doctrine that such exemption of pledges from statutory liability must be made by

statute, that a number of the States have enacted such laws, all of which is fully set forth on pages 472 and 477 by Mr. Jones. The absence of Georgia from the list of States therein referred to, is suggestive.

Attention is also called to Sec. 445 A., page 471 of such work, in which Mr. Jones treats of the National Banking Act and the liability of pledgees thereunder.

Ap analysis of the other cases cited below, and it is believed of all the late cases upon this subject decided by the Federal Courts, will show that not only has the right of a National Bank to transfer for its own protection, into its own name, stock in other corporations held by it as collateral security, never been questioned, but more than this; all such cases recognize that if such transfer is made absolutely and without condition or qualification, then and in such case National Banks are liable to creditors on account thereof.

In Pauly vs. State Loan Co., 165 U. S., pages 606-9, the stock in question was transferred to the State Loan & Trust Co., of Los Angeles as "pledgee," and the Court, therefore, held that as the National Banking Act was only intended to impose a liability upon the actual owner of the stock, that this transfer as pledgee was not sufficient to create an estoppel, but the Court, Mr. Justice Harlan, after analizing the previous decisions deduced from them the following rule (among others) page 619.

"That if the owner transfers his shares to another person as collateral security for a debt due to the latter from such owner, and if, by the direction or with the knowledge of the pledgee, the shares are placed on the books of the association in such way as to imply that the pledgee is the real owner, then the pledgee may be treated as a shareholder within the meaning of U. S. Rev. Stat. Sec. 5151, and, therefore, liable upon the basis prescribed

by that section for the contracts, debts and engagements of the association."

California National Bank vs. Kennedy, 167 U. S., 364, was a case of the attempted investment by a National Bank of its funds in the stock of a saving's institution, and the Court, Mr. Justice White, asserts the recognized rule that National Banks have no such power to make such investments, that the transfer upon the books is *ultra vires* and that a National Bank has the right "to assert the nullity of an act which is ultra vires."

The case of First National Bank of Concord vs. Hawkins, 174 U. S., 374, was a case also of the attempted investment by one National Bank of its funds in the stock of another, and this Court simply follows California National Bank vs. Kennedy, supra.

Scott vs. Deweese, 181 U. S., 202-17-18, was a case of the irregular issue of the stock of a National Bank, and the Court, Mr. Justice Harland, distinguishes such case from National Bank vs. Hawkins, supra., reiterating the doctrine of the above case with reference to the investment by a National Bank of its funds in the shares of another National Bank, as above set forth, and closing the opinion in these words: "Whether a national bank may not be deemed a shareholder, within the meaning of section 5151, if it holds shares of another bank as security for previous indebtedness, is a question suggested in former cases, but not decided, and upon which, in this case, no opinion need be expressed."

It is respectfully suggested that the Court in this dicta overlooked the case of Germania National Bank vs. Case, supra. But, however, this may be, this statement refers merely to the right of one National Bank to become the holder of the stock of another *National Bank* under section 5201 of the National Banking Act, which section provides that no National Bank shall make a loan or

discount on the security of its own stock. This Court was in such opinion discussing the effect of the decision in National Bank vs. Hawkins, supra., wherein it was held that: "this provision forbidding a National Bank to own and hold shares of its own capital stock would, in effect, be defeated if one National Bank were permitted to own and hold a controlling interest in the capital stock of another." The Court, Mr. Justice Harlan, therefore, in the closing remarks above quoted, evidently had no reference to any case except that of one National Bank holding the stock of another *National* Banking Association.

The cases of Baker, receiver, vs. Old National Bank, 86 Fed. Rep. 1006, and Hubbell vs. Houghton, 86 Fed. Rep., 527, were both cases in which the transfer of the stock upon the books of the corporation was not absolute, in which cases under the National Bankng Act, there couldnot possibly be any liability.

It is respectfully submitted, therefore, that the doctrine established in Germania National Bank vs. Case, supra., and affirmed in Anderson vs. Phila. Warehouse Co., supra, and again affirmed in Pauly vs. State Loan Co., supra., is the law on this subject, and that if a National Bank, or any individual allows himself to appear on the books of any corporation as an owner of its stock, then it is subject to the liability to creditors imposed by the statute creating the corporation upon the record holders of the stock.

It should be noted here that there is a sharp distinction in this respect between the National Banking Act and the laws of Georgia with reference to statutory liability.

As shown above, the intention of the National Banking Act is to hold the *owner* of National Bank stock primarily liable to its creditors regardless of the *record*

ownership of the stock, and, indeed, the record holder of such stock, if not the owner, can only be held so liable upon the principle of estoppel; whereas, as determined by the Supreme Court of Georgia in the cases above cited ("and evidently from the wording of the law properly so determined") this liability is primarily imposed by the Georgia statute upon the *record* holder of the stock regardless of *ownership*.

And with reference to the particular point under discussion, that is to say; the liability of the record holder of the stock, when in fact such stock is held as collateral security, the Court in Chattam Bank vs. Brobston, 99 Ga., 801, says: "Where the charter of a bank imposes upon all its stockholders personal liability to its creditors, such liability attaches as well to those who acquire a complete legal title to stock of that bank by having same transferred to them as collateral security for debts due by the transferors, as to those who purchase such stock outright."

The holders of record of the stock of Georgia corporations, therefore, regardless of the legal ownership or the purpose for which such stock is held by them, are liable directly to the creditors of the corporation by virtue simply of such record holding, and, there is no analogy between the case of such stockholders and the stockholders of record in National Banks who can only be held liable as owners through the principle of estoppel. In the case at bar, the question of estoppel does not even arise, for the reason that the statute imposes such liability directly upon the defendant as a stockholder of record.

It is suggested, in conclusion, that this entire case should be controlled by the decision of the Circuit Court of Appeals upon the first appeal, 99 Fed. Rep., 635. Such Court then held that the liability of the defendant

was controlled, even as to limitations, by the decisions and statutes of Georgia; certainly then, such decisions and such statutes must control the question whether or not the defendant was, as a stockholder of record in a Georgia bank, liable to the creditors at all.

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Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903. No. 88.

THE BRUNSWICK TERMINAL COMPANY,
A CORPORATION, ET AL.,
Appellants,

vs.

THE NATIONAL BANK OF BALTIMORE,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF ON BEHALF OF THE APPELLEE.

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STATEMENT OF FACTS.

The appellee was and is a national banking association doing business in the city of Baltimore, Maryland, and in the month of August, 1890, discounted for one Lloyd, a promissory note for $10,000, drawn by him and a certain F. E. Cunningham, which note was endorsed by the firm of Lloyd and Adams and W. A. Cunningham. As *collateral security* for the payment of said note, the appellee received 110 shares of the capital stock of the Brunswick State

Bank, a corporation of the State of Georgia, engaged under its charter, in a general banking business, (hereinafter, for convenience, designated the "Bank"), said stock being of the par value of $100 per share. In order to protect itself as pledgee, the appellee caused this stock to be transferred into its own name on the books of the "Bank" on or about the 25th of August, 1890. The above-mentioned promissory note having been paid at its maturity, the pledge was at an end, and the pledgee, being under obligation to return the stock, and the pledgor being entitled to its return, the appellee, by direction of the pledgor, re-transferred the stock on the books of the "Bank," which re-transfer was fully completed on said books on or before the 20th of October, 1890. No notice by publication of the fact of this re-transfer was given by the appellee. The appellee never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the "Bank," its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof. The appellants who are creditors of the "Bank," had no knowledge in fact that the name of the appellee had appeared upon the books of the "Bank" as stockholder. The appellants, however, did not become such creditors until after the 20th day of October, 1890; *in fact, none of their claims accrued before 1893.*

On or about the 30th day of May, 1893, certain creditors of the "Bank" filed their petition in the Supreme Court of Glynn County, Georgia, alleging the "Bank" to be insolvent, and praying for the appointment of a receiver to take possession of its assets and administer them, and on the 29th of June, 1893, that Court decreed the "Bank" to be insolvent and appointed a receiver for the purposes stated. The State of Georgia and Glynn County being preferred creditors, all the assets of the "Bank" were exhausted in the payment of those preferred claims and the costs of litigation, and nothing was left for the payment of its other creditors.

On January 14, 1898, the appellants filed their bill of complaint in the Circuit Court of the United States for the

District of Maryland against the appellee, and sought to hold it liable as a stockholder in the "Bank" by virtue of the fact that the 110 shares of stock in question had at one time stood in its name on the books of the "Bank" in the circumstances above narrated.

The bill was filed under the provisions of section 9 of the Statute of Georgia, incorporating the "Bank," (being the Act of 1889, page 522), which is as follows: (Italics ours.)

> "Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets, and the *stockholders*, in addition thereto shall be individually liable, equally and ratably and not one for another, as sureties to the creditors of such corporation for all contracts and debts of said corporation *to the extent of the amount of their stock therein* at the par value thereof respectively, *at the time the debt was created*, in addition to the amount invested in such shares."

And also section 1496 of the Code of Georgia of 1882, as follows:

> "When a *stockholder* in any bank or any other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable, provided he shall give notice once a month for six months of such transfer, immediately thereafter in two newspapers in and nearest the place where such institution shall keep its principal office."

By Statutes of Georgia of 1892, No. 38, p. 55, approved December 12, 1892, the *proviso* in the above-mentioned § 1496 of the Code of 1882, was repealed and re-enacted so as to read as follows:

> "*provided*, he shall within ten days thereafter, cause notice of such transfer to be published once a week for four weeks in the newspaper which publishes the sheriff's sales of the county in which such corporations shall keep its principal office."

The right was reserved to either party to refer to any laws or statutes of the State of Georgia germane to the case. (Record, page 2.)

Other statutes which will be relied upon by the appellee, are as follows:

Statute of Georgia, 1894, pp. 76, 77, No. 122, entitled "STOCKHOLDERS, LIABILITY OF," approved December 18, 1894, which made important changes in favor of stockholders, §§ I, II and VI, being as follows:

> "Section I. Be it enacted by the General Assembly of the State of Georgia, That on and after the passage of this Act, whenever a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer."
>
> "Section II. Be it further enacted, That the stockholders in whose name the capital stock stands upon the books of such bank or other corporation at the date of its failure, shall be primarily liable to respond upon such individual liability; but upon proof made, that any of said shareholders, at the date of the failure are insolvent, recourse may be had against the person or persons from whom such insolvent shareholder received his stock, if within a period of six months prior to the date of the failure of such bank or other corporation."
>
> "Section VI. Be it further enacted, That all laws and parts of laws in conflict with this law be, and the same are, hereby repealed."

The above sections I and II of the Acts of 1894, appear substantially as §§ 1888 and 1889 of the Code of 1895, Vol. 2, pp. 33 and 34.

As section VI of the Acts of 1894, repealed all conflicting laws, § 1496 of the Code of 1882, as amended by the Act of 1892, No. 38, p. 55, was repealed, and therefore does not appear in the Code of 1895.

Paragraph 4 of the Constitution of Georgia, ratified December 5, 1877, and constituting § 5097 of the Code of Georgia of 1882, p. 1304:

> "BUYING STOCK, ETC., IN OTHER CORPORATIONS; COMPETITION.—The General Assembly of this State shall have no power to authorize any corporation to buy shares, or stock, in any other corporation, in this State, or elsewhere, or to make any contract, or agreement whatever, with any such corporation, which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses, or to encourage a monopoly; and all such contracts and agreements shall be illegal and void."

The appellants relied upon certain decisions of the Supreme Court of Georgia as decisive of this case, principally the cases of Brobston vs. Downing, 95 Ga. 505, (consisting of head notes only), and Chatham Bank vs. Brobston, 99 Ga. 801. These two cases, for the convenience of this Honorable Court, are reproduced in full in the appendix to this brief.

There is no evidence or admission in this cause of the insolvency of the person or persons in whose name the 110 shares of the stock of the "Bank" in question, stood at the date of its failure.

The answer denied all liability, and after hearing, upon an agreed statement of facts, a decree was passed dismissing the bill. The Court (Morris, Dist. J.), held that the appellee was not liable to the appellants because it had transferred its stock on October 20, 1890, and none of the claims of the appellant had accrued prior to 1893. The Court did not consider the other ground urged by the appellee, that being a national bank, it could not become a purchaser of shares in another corporation, and if it sought to do so, it could not be held liable on such stock. (Record, pages 1-4).

The opinion of Judge Morris is reported in 112 F. R., 812, and for convenience is also reproduced in the appendix to this brief.

Upon appeal to the Circuit Court of Appeals for the Fourth Circuit, the learned Judges of that Court, Simonton, Ct. J., and Waddill and Brawley, Dist. J. J., being divided and in doubt, certified to this Honorable Court for its construction and advice thereon, the following questions:

1. Is this question of the liability of a stockholder of this bank one of general law, or must we follow without question the decisions of the Supreme Court of Georgia thereon?

2. When shares in another corporation are transferred into the name of a national banking association, is there a presumption, and consequent notice to the world, that such shares are held by such national banking association in some other capacity and not as owner thereof?

2. If a national banking association causes shares in another corporation to be transferred into its own name, is it estopped from setting up the invalidity of such a transaction?

Argument.

1.

As to the first question certified: There can be no doubt that the question of the liability of the appellee as a stockholder of the "Bank" is one of commercial law and general jurisprudence, and consequently the Circuit Court of Appeals is not bound to follow the decisions of the Supreme Court of Georgia thereon.

In *Burgess vs. Seligman*, 107 U. S. 20, being the leading case in this Honorable Court upon the subject, a statute of Missouri imposing upon the stockholders of a corporation at its dissolution a liability for its debts was under consideration. The statute provided that no person holding stock as * * * collateral security, should be personally subject to such liability, but that the persons pledging such stock should be considered as holding the same and liable. In an

action by Burgess who was a judgment creditor of the Memphis, Carthage and Northwestern Railroad Company, a Missouri corporation, against Seligman & Co., who were alleged to be stockholders of that corporation, the judgment of the Circuit Court rendered in favor of the defendant was affirmed, this Court holding—(1.) That persons to whom a corporation pledged its stock as collateral security were within the exemption of the statute—(2.) That certificates of stock absolute upon their face, issued in trust, or as collateral security to a creditor, may be shown to be so held by evidence *in pais*.

After the case was decided in the Circuit Court, the Supreme Court of Missouri made a contrary decision against the same stockholders, at the suit of another plaintiff, holding that the clause of exemption in the statute did not extend to persons receiving from the corporation itself stock as collateral security, notwithstanding which this Court held that it was not bound to follow that decision, saying (italics ours) that

> "the Courts of the United States, in the administration of State Laws in cases *between citizens of different States*, have an *independent jurisdiction*, coordinate with that of the State courts, and *are bound to exercise their own judgment as to the meaning and effect of those laws.*" * * * "So when contracts and transactions have been entered into, and *rights have accrued thereon under a particular state of the decisions, or when there has been no decision, of the State tribunals*, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued." (Ib. pp. 33, 34.)

In the recent case of Stanley County vs. Coler, 190 U. S. 435, certain county bonds had been issued under statutes and sections of the Code of North Carolina, which permitted bonds to be issued to enable counties to subscribe to stock when necessary to aid in the completion of any railroad in which citizens of the county might have an interest. These

bonds were held by this Court to be valid, notwithstanding that the Supreme Court of North Carolina had decided in another action that the bonds were invalid.

Mr. Justice McKenna, speaking for the Court, in the course of his opinion said, at pages 444, 445:

> "The general rule undoubtedly is that we accept the interpretation put by the State Courts upon the State Constitution and statutes. There are exceptions to the rule, and the case at bar presents one of these. The rule and its exceptions are stated in *Burgess vs. Seligman*, 107 U. S. 20." * * *

The learned justice, in commenting upon that case, said in part, (italics ours):

> "The Supreme Court of Missouri held that the exemption of the statute did not extend to persons receiving from the corporation itself stock as collateral security. This Court decided to the contrary, and held that it was not bound to follow the decision of the Supreme Court of the State. The question presented was regarded as one of *commercial law and general jurisprudence, and the right to exercise our own judgment was asserted.* * * * *Burgess vs. Seligman*, was applied in *Folsom vs. Nine-Six*, 159 U. S. 611, to sustain the validity of bonds issued by the defendant township to aid in the construction of a railroad. The power to issue them depended upon several statutes and the Constitution of the State. After the bonds were issued the Supreme Court of the State decided that the statute authorizing the issue of the bonds was unconstitutional. *There had been no decision to that effect prior to the issuing of the bonds.* We held that the decision of the Supreme Court was not binding, and construed the constitution and statutes for ourselves, and sustained the bonds."

Now, in August, 1890, when the 110 shares of stock in question were transferred on the books of the "Bank" from the pledgor to the appellee, as security for the payment of the debt, and in October, 1890, when the same were

re-transferred by the appellee to the pledgor upon the payment of that debt, the law of Georgia as to the status of a person holding shares of stock in a corporation as collateral security was well defined. He was declared not to be a stockholder. This is clear from the case of The National Exchange Bank of Augusta vs. Sibly et al., 71 Ga. 726, decided in 1883, which was an action on the case for deceit by the pledgee of spurious stock of the Augusta and Port Royal Compress Company, a corporation, which stock was represented by the defendants, its directors, to be genuine fully paid stock. The second ground of demurrer to the action was as follows:

> "That it appears from plaintiffs' own showing, that it is a stockholder of the corporation, and has no remedy at law against the directors without making the corporation a party."

As to this contention, the Supreme Court of Georgia said at page 732 (italics ours):

> "As a general proposition, we are not prepared to hold that a party to whom stock in a corporation is hypothecated as collateral security for a debt, thereby *becomes a stockholder in and member of that corporation*, with all the powers and privileges of such stockholder and corporator in the management of the affairs of the Company. *He holds it for a special purpose only;* the owner does not part with the general property, and *the holder is simply a trustee to carry into effect the objects for which the hypothecation was made.* Code, §§ 2780, 2177, 43 Ga. 415. He parts with the title temporarily; *he has the right to redeem at any time by paying the debt; if a sale at all, it is not absolute, but defeasible only.* This dispenses with the necessity of determining the relation between the corporation itself and its directors, as to their respective liabilities for stock issued in excess of the amount authorized by its charter."

To follow the decision in 71 Ga. 726, that a person holding stock of a corporation as pledgee does not thereby become a stockholder, would result in no injury to the

appellants. They did not contract with the "Bank" upon the faith that the appellee was a stockholder; in fact, it is admitted that they had no knowledge that the name of the appellee had ever appeared upon the books of the "Bank" as a stockholder. On the other hand, the greatest injustice would be done to the appellee to hold it liable for debts of the "Bank" contracted three years after the stock which stood in its name had been re-transferred by it to the real owner. The appellee surely was entitled to rely upon the case in 71 Ga., which, in effect, said: "You held this stock as pledgee. You are not to be considered as a stockholder, and, therefore, you are not within the statute which requires notice to be given of the re-transfer of the stock held by you as pledgee."

If we are wrong in this, still there can be no recovery against the appellee, as there is no evidence or admission in the case of the insolvency of the pledgors of the stock to whom it was re-transferred by the appellee. It is not only incumbent upon the appellants to aver, but it is also absolutely necessary for them to prove, that the persons in whose name the stock stood *at the date of the failure of the "Bank"* were themselves insolvent before any liability whatever can be asserted against the appellee.

The Act of 1894, p. 76, § 2 (page 4, ante), governs this case, although not enacted until after the failure of the "Bank," for it is to be observed that the statute does not deprive the appellants of their right to enforce a stockholder's liability against the appellee, if any such liability, in fact, ever existed. It simply provides that no such liability shall be enforced as against the previous owner of stock, until it appears that the person to whom such stock had been transferred, and in whose name it appeared at the date of the failure of the corporation, shall be proven to be insolvent. The statute simply affects the remedy, and not the obligation.

"Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract."

Sturgis vs. Crownenshield, 4 Wheaton, 122, *200*.
Hill vs. Merchants Ins. Co., 134 U. S. 515, 527.

As an evidence of the tendency of this Court to protect those who hold stock in corporations as mere pledgees from stockholders' liability to creditors, we refer to the recent case of Rankin vs. Fidelity Co., 189 U. S. 242, where all the cases upon the subject are ably reviewed in the opinion of the Court delivered by Mr. Justice Brown.

The appellants however, as above mentioned, rely upon the decisions in 95 Ga. (decided in 1894) and 99 Ga. (decided in 1896), set out in the Appendix to this Brief.

The learned District Judge, in reviewing those cases, (see appendix) said:

"Against this construction the complainants urge a ruling by the Supreme Court of Georgia in the case of *Brobston vs. Downing*, 95 Ga. 505 (1894). This was a proceeding similar to the present one to hold stockholders of the insolvent Brunswick State Bank, resident in Georgia, liable to creditors.

"The Supreme Court of Georgia filed no opinion, but by a head-note memorandum ruled (one of the three judges doubting) that the liability of a stockholder continued for any debt contracted by the corporation at any time, both before as well as after he had transferred his stock, unless he had given notice of the transfer conformably to Section 1496 of the Code.

"This ruling was made four years after the defendant in this case had re-transferred the stock held by it in pledge, from August 25th to October 20th, 1890. The same questions growing out of the liability of the stockholders of the Brunswick State Bank came before the Supreme Court of Georgia, again in *Chatham Bank vs. Brobston*, 99 Ga., 801 (1895). In that case two of the judges considered themselves bound by the previous ruling in 95 Georgia, and the third judge recorded his

dissent. The court recites that Section 1496 of the Code had been repealed, and that the legislature had in 1894, substituted a provision that the individual liability of a stockholder should cease upon transfer of his stock, unless the corporation should fail within six months after the transfer; and that in view of this change in the law differences of opinion between the judges were not important, except as affecting the particular litigation before it. The court says (page 804): 'If another case should arise the decision of which would depend upon the question as to which we disagree, the whole matter would still be open to review by a bench of six justices. Accordingly, we have agreed among ourselves to let the present decision stand upon the head-notes as announced, with the foregoing explanation of our reasons for not entering upon a discussion as to what should be the proper construction of the bank charter now under consideration.

"The present defendant [appellee] was not a party to either of the above-mentioned cases, never was within the jurisdiction of the courts of Georgia, never was a real, but only a nominal shareholder for three months in 1890, and in view of this explanation by the Supreme Court of Georgia it would seem that the question of the liability of the defendant in the case now being considered may be fairly treated as still open for independent consideration and examination.—*Central R. R. vs. Wright*, 164 U. S. 327-332."

Now what is the principle upon which stockholders are liable to creditors of the corporation in which they hold stock?

The general principle is that persons dealing with a corporation have in view the financial standing and responsibility of its stockholders.

As is said in Williams vs. Hanna, 40 Indiana, 544, quoted in Thompson's Liability of Stockholders, section 95:

"The creditor, if he looks to the individual liability of stockholders at all, looks to those who are stockholders at the time he lends his credit and to those he should be content to look for the collection of his debt."

See also—1 Cook on Stockholders, section 259.

Matthews vs. Albert, 24 Md. 527-539.

Stockholders are held to be those appearing as such upon the books of the corporation. And it has been held that a stockholder only ceases to be such when the transfer of his stock is entered upon the books of the corporation.

Statutes imposing double liability upon stockholders are strictly construed.

Cook on Stockholders, par. 214, and cases cited, states:

> "Inasmuch as all statutes creating an additional liability on the part of stockholders are in derogation of the common law, they are to be strictly construed, etc., etc., etc., and are not to be extended beyond the plain intent of the words of the statute."

It follows from the above then, as a general proposition, that a creditor can not look to stockholders of a former date who have transferred their stock before his claim arose.

For to hold otherwise would be to let him claim against every successive owner of the particular stock in question since the chartering of the corporation, and no stockholder could ever be released from his statutory liability. (This, in effect, has been the result of the Georgia decisions quoted above and now set aside by the Legislature of Georgia in 1894.)

And as said by the District Court (appendix):

> "It surely was not to be supposed by any one who examined the charter of the Brunswick State Bank and section 1496 of the Code of Georgia that it was intended to inflict a mere penalty upon those who might from time to time hold its stock by arbitrarily making them liable for all transactions during twenty years after they had ceased to be stockholders."

Therefore it is submitted (1) that, granting that the appellee was from August to October, 1890, the legal owner of the stock, it never had any liability to the appellants after it transferred its stock, since their dealings with the failed bank were all "*subsequent*" to such transfer, and failure to advertise could only (if at all) render it still liable to creditors who were such prior to its transfer of the stock.

(2) That section 1496 can have no further effect than to continue the last stated liability, for to give it greater force by reason of 95 Georgia and 99 Georgia decisions is in effect "legislation by the Court."

Section 1496 as amended contemplated an advertisement contemporaneous with the transfer of the stock and giving a "*creditor*" six months thereafter in which to assert his claim.

The Court will note the difference of opinion between the Judges of the Georgia Supreme Court in deciding 95 Georgia 505 and 99 Georgia 801, and for the opinion of the Supreme Court of the United States upon cases decided upon such "head-notes:" see 164 U. S., pages 332-4, Central R. R. & Banking Co. of Georgia vs. Wright, also decided in reference to Georgia decisions. *A fortiori*, does their condemnation of that Georgia decision apply to those in 95 Ga. and 99 Ga.

II AND III.

Admitting, for the sake of the argument only, that one who was a stockholder of the "Bank" continued liable as such by reason of his failure to give the required notice by advertisement of the fact of the transfer of his stock, it is submitted:

First. That National Banks have only incidental powers to hold stock in another corporation.

Second. Of the powers of a National Bank under the statutes providing for their creation, every one must take notice.

Third. Whatever may be the nature of their holding of such stock, the presumption is against any intention on their part to become the *owners* of such stock.

Therefore we contend that the second and third questions certified should be answered as follows:

2. When shares in another corporation are transferred into the name of a national banking association, there is a

presumption, and consequent notice to the world, that such shares are held by such national banking association in some other capacity and not as owner thereof.

3. And if a national banking association causes shares in another corporation to be transferred into its own name, it is not estopped from setting up the invalidity of such a transaction.

The Supreme Court of the United States has not as yet had before it a case in which it was necessary to decide that a holding by a National Bank *in its own name* (without words of qualification) of stock in another corporation was *per se* notice to all creditors of such corporation that such National Bank was not the absolute owner of such stock, but in a number of recent, well-considered decisions, it has quite plainly indicated that to so hold is the logical outcome of the limited powers for holding stock possessed by National Banks under the Revised Statutes and is the next logical step in the line of cases referred to.

In Robinson vs. Southern National Bank, 180 U. S., page 295, decided February 25, 1901 (following California Bank vs. Kennedy, 167 U. S. 362, and Concord Bank vs. Hawkins, 174 U. S. 364), the Court says at page 305:

> "The reported decisions show that there are two classes of cases of this character,—one, wherein the liability has been enforced against a party defendant in whose name the stock was registered on the books of the bank, regardless of the question whether he was, in point of fact, the owner of said stock,—and the other, where the liability has been enforced against the real owner of the stock, although the stock stood registered on the books in the name of a third person."

And at page 306:

> "In the former class the liability is said to be created by the act of the party in whose name the stock is registered, in holding himself out as a stockholder, and thus inviting others to deal with the bank and become creditors, relying on the reputation and financial strength of the nominal stockholders."

"Cases are also to be found in the books where transfers, made by shareholders, in anticipation of a bank's insolvency, to irresponsible persons, have been held to be fraud on the statute, and inefficacious to relieve the original holder from liability."

Bowden vs. Johnson, 107 U. S. 251.

Richmond vs. Johns, 121 U. S. 27.

Pauly vs. State Loan Co., 165 U. S. 619.

Matteson vs. Dent, 176 U. S. 521 and 530-1.

At page 309:

"It was held in Pauly vs. State Loan and Trust Company (*supra*), that where stock was transferred in pledge, and the pledgee, for the purpose of protecting his contract, caused the stock to be put in his name on the books as *pledgee*, such a registry did not amount to a transfer to the pledgee as owner, and that he therefore was not liable, although the pledgor might continue to be so."

"This Court has held in California Bank vs. Kennedy (167 U. S., 362) and in Concord Bank vs. Hawkins (174 U. S., 364) that it is not competent for national banking associations to *invest* any portion of their capital *permanently* in the stock of another corporation, and that they are not estopped from setting up such want of power against suits to enforce liability for assessments made by the Comptroller of the Currency."

"While not disposed, as at present advised, to push the principle of these cases so far as to exempt such banks from liability as other shareholders, where they have accepted and hold stock of other corporations as collateral security for money advanced (a proposition which we withhold from decision) *we think there is a presumption in such cases against any intention on the part of the lending bank to become owner of the collateral shares.*" (The italics are ours.)

This was the view taken in the case of Baker, Receiver, vs. Old National Bank of Providence, 86 Federal Reporter 1006, (see also Hubbell vs. Houghton, 86 Federal Reporter

547), where it was held, after full consideration, that it is only in clear cases that a pledgee, on the ground of estoppel, can be subjected to liability for an assessment on National Bank stock, instead of the owner, upon whom the legal obligation rests.

The case of Baker, Receiver, vs. Old National Bank of Providence, 86 Federal Reporter, page 1006 (C. C. District of R. I.) May 5, 1898, is a strong one.

> "A pledgee of National Bank stock is not liable as a stockholder for assessments, except by estoppel." (Cases cited.) "Unless by permitting the shares to stand upon the registry in the above form the bank has held itself out as owner, so that upon principles of fair dealing it is estopped, as against creditors, from asserting that it was not in fact owner, there is no ground for holding the defendant bank liable."

It is certainly not "fair dealing" in our case to hold us liable.

The question is one of "holding forth."

In the case at bar, while the appellee did for a time appear on the registry of the "Bank" as a stockholder, yet there was no "*holding forth*" of itself *to the appellants* in that capacity since it had actually ceased to be a stockholder of record long before the appellants became creditors.

> "The creditor, if he looks to the individual liability of stockholders at all, looks to those who are stockholders at the time he lends his credit, and to those he should be content to look for the collection of his debt."
>
> Williams vs. Hanna, 40 Indiana, 544 (quoted Thompson's Liability of Stockholders, section 95.)

The appellants by inspecting the stock registry of the "Bank" would not have found the appellee registered there as a stockholder. On the contrary, they would have found that years before they "lent their credit" to the "Bank," the appellee had transferred its stock to another, and it was

only by their searching the files of the local newspaper and ascertaining that no advertisement had been given, and applying the latest Georgia decisions, that it could in any sense make the appellee out as a "stockholder."

As is said in Baker vs. Bank, *supra*, page 1008:

> "The creditor, who by legal fiction or presumption, is held to rely upon the form of registry of the shares, must also be held to possess the knowledge that the defendant bank has only incidental powers to hold stock in another national bank, (citing Bank vs. Case, 99 U. S. 628, and Bank vs. Kennedy, 167 U. S. 362, 367)."

In 181 U. S. 202 (at pages 216, 217 and 218), Scott vs. Deweese, decided April 21, 1901, (same as Scott vs. Lattimer, 89 Federal Reporter, 843, 857, 862; 60 U. S. Reports, 720, 743, 751), discussing the cases of Bank vs. Hawkins, (174 U. S. 364,) and Bank vs. Kennedy, (167 U. S. 362,) the Court says at page 218:

> "But a National Bank is without authority to use its funds for the purchase of the stock of another National Bank merely for the purpose of investment, and therefore, as held in the 'Hawkins' case, it could not under such circumstances become a shareholder within the meaning of section 5151. Of the powers of a National Bank under the statutes providing for their creation every one must take notice. Whether a National Bank may not be deemed a shareholder, within the meaning of section 5151, if it holds shares of another bank as security for previous indebtedness, is a question suggested in former cases but not decided, and upon which, in this case, no opinion need be expressed."

The appellee did not become a stockholder, except as "pledgee." The Supreme Court said in the Kennedy case that a National Bank might acquire *of necessity* the pledged stock and thus become subject to the liability of a shareholder; but, unless it does thus acquire the title to the stock, is it consistent with the U. S. Banking Law to hold it as a stockholder?

The "holding" contemplated by the Georgia statute must have been a complete holding. There was not this holding by the appellee, and as it was only in fact pledgee, the pledgor could have been held (as the real owner) before the re-transfer.

The ground on which the transferee is held liable is because by the transfer the transferor is discharged, but here he was not discharged, as the appellee only took in pledge. 165 U. S. 611, and 96 U. S. 330.

In Thompson vs. Southern National Bank, 180 U. S. 309, it is held that it is not competent for a National Bank to *invest* its capital *permanently* in another National Bank.

If so, do not the same reasons which induced this decision preclude from holding it accountable for an indefinite time under the Georgia statute?

The trend of these decisions is clearly seen. The point has not been decided, because, although foreseen as the logical outcome of the decisions announced, none of the cases decided has presented the exact point for decision. It is plainly the next logical step in the application of the principle. The mere holding by a National Bank of stock in another corporation puts all persons dealing with that corporation upon inquiry as to what its holding of stock amounts to. It almost amounts to a presumption that it holds it as pledgee. In view of these decisions such holding clearly presumes that it is not the "owner" of the stock, whatever may be its actual relation to it.

In conclusion, we consider: (1) That the question presented by the record is one of mercantile law and general jurisprudence, and the Circuit Court of Appeals is left free to exercise its own judgment independent of the decisions of the Supreme Court of Georgia, reported in 95 Ga., 505, and 99 Ga., 801. Should it be necessary, however, to rely upon the decisions of the Supreme Court of that State, then 71 Ga., 726, is controlling. In this connection, the failure

of the appellants to prove the insolvency of the person in whose name the 110 shares of stock stood on the books of the "Bank" on the date of its failure is fatal, and, of course, relieves the appellee of all liability in the premises;

(2) That when the shares of the "Bank" were transferred on its books to the appellee, the presumption at once arose, which carried with it notice to the world, that such shares were held by it in some other capacity than as owner thereof; and

(3) That in view of the public policy of the State of Georgia, as disclosed by the constitutional provision (ante p. 5), the appellee is not estopped from setting up the invalidity of the transaction.

Respectfully submitted,

WILLIAM L. MARBURY,
FRANK GOSNELL,
ALLAN McLANE,
Solicitors and of Counsel for Appellee.

APPENDIX.

Brobston & Co. et al. vs. Downing, and *vice versa*. Brobston & Co. et al. vs. The Chatham Bank, 95 Ga. 505, October Term, 1894.

SYLLABUS.

BLECKLEY, C. J.

1. With or without a clause in the charter restricting the personal statutory liability of stockholders to the amount of stock at its par value at the time the debt in question was created, the liability exists and continues for any debt incurred by the corporation at any time until the stockholder who claims to be exempt by reason of having sold and transferred his stock before the debt was created, has given notice of such sale conformably to section 1496 of the Code.

LUMPKIN, J., concurring *dubitante*.

2. Where the personal statutory liability of the stockholders of a corporation is to be apportioned amongst all according to the relative amount of stock owned severally by each, and where the corporation is insolvent and has no assets applicable to the payment of its unsecured creditors, one or more of those creditors may bring suit in behalf of themselves and all others who may choose to come in and be made parties against all the stockholders to enforce their statutory liability and apportion the amount which each should contribute to discharge the claims of the various creditors. That some of the stockholders are dead and their estate unrepresented, and some cannot be found within the jurisdiction of the Court, is a sufficient reason for omitting them from the suit as parties defendant.

3. On the facts alleged in the petition, the suit could be maintained without first reducing the claims of the creditors to judgment against the corporation, there being no corporate assets in excess of the claims in favor of secured or preferred creditors. And the fact that the assets have been seized in another suit, which is still pending, and are in the hands of a receiver is no obstacle to the present proceeding.

Judgment reversed on main bill of exceptions in each case; on cross-bill affirmed.

October 22, 1894.

Chatham Bank vs. Brobston & Co., et al. Hull & Lathrop vs. Brobston & Co., et al. Isaac vs. Brobston & Co., et al. 99 Ga. 801, 802, 803, 804. October Term, 1896.

SYLLABUS.

"1. The decisions of this Court in the cases of Brobston & Co. et al. vs. Downing, and *vice versa*, and Brobston & Co. et al. vs. The Chatham Bank, 95 Ga. 505, upon a review thereof, are affirmed.

"2. Where the charter of a bank imposes on all of its stockholders, personal liability to its creditors, such liability attaches as well to those who acquire a complete legal title to the stock of the bank by having the same transferred to them as collateral
[801] security for debts due by the transferers as to those who purchase such stock outright.

"3. Under the charter of the Brunswick State Bank and the general rules of law applicable thereto, a stockholder is individually liable for his *pro rata* part of the corporation debts created before he acquired his shares of stock by transfer, as well as for a like part of those created during his ownership of the shares.

"4. A stockholder in that bank is also liable to the same extent upon debts of the corporation created after he transferred his shares, unless he gave notice of the transfer, as prescribed in section 1496 of the Code."

GOBER, J., concurring.

"As an open question, I would hold that the decisions of this Court in the case of Brobston & Co. et al. vs. Downing, and *vice versa*, and Brobston & Co. et al. vs. The Chathan Bank, so far as announced in the first head note (95 Ga. 505), 802 are erroneous as fixing upon certain stockholders of the Brunswick State Bank, a rule of liability at variance with the provisions of its charter, and therefore ought to be overruled; but inasmuch as a majority of the Court are of the opinion that those decisions are correct and should be affirmed, I concur in the present judgments as rendered."

Argued July 13, and December 3, 1896. Decided February 15, 1897, by Simmons, Chief Justice, Lumpkin, Associate Justice, and Gober, Judge, presiding in place of Atkinson, Justice, disqualified.

LUMPKIN, JUSTICE, AND GOBER, JUDGE:

The 9th section of the charter of the Brunswick State Bank declares "that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders, in addition thereto, shall be individually liable, equally and ratably, and not one for another, as * sureties, to the creditors of such corporation * 803 for all contracts and debts of said corporation to the extent of the amount of their stock therein at the par value thereof, respectively, at the time the debt was created, in addition to the amount invested in such shares."

Section 1496 of the Code of 1882, reads as follows: "When a stockholder in any bank or other corporation is individually liable under the charter and shall transfer his stock, he shall be exempt from such liability unless he receives a written notice from the creditor within six months after such transfer of his intention to hold him liable: *Provided* he shall give notice once a month for six months of such transfer, immediately thereafter, in two newspapers in or nearest the place where such institution shall keep its principal office."

In the case of Brobston & Co. et al. vs. Downing, and Same vs. The Chatham Bank, 95 Ga. 505, this Court in

effect decided that a stockholder in this bank was individually liable for his *pro rata* part of the debts of the corporation created before he became a stockholder as well as for a like proportion of the indebtedness incurred by it while he held his stock. This decision controls the present cases. Upon a review of it duly allowed, Chief Justice Simmons and Justice Lumpkin are of the opinion that it should be affirmed, and Judge Gober, being thus bound by it, of necessity concurs in the judgments now rendered. He is, nevertheless, of the opinion that in dealing with the cases reported in 95 Ga. *supra*, the Court, in so far as it held that a stockholder of this bank could be made liable for any debt created by it before he actually became a stockholder, misconstrued that portion of the bank's charter which is quoted above. If free to do so, he would hold that under the language just referred to, the individual liability of a stockholder of this corporation is limited to such debts only as were contracted during the time he was an owner of stock and up to the date when, relatively to such liability, he legally severed his connection with the corporation. We all *agree that any such owner, although he may have transferred his stock, would still be bound under the above-cited section of the Code for whatever liability the charter fixed upon him, unless he gave the notice provided for by that section.

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In 1894 an Act was passed by the General Assembly which materially modifies the law bearing upon this subject, in that it dispenses with any necessity for a stockholder, upon transferring his stock, to publish notice of the fact in order to be discharged from liability. That Act declares that "whenever a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer." Act 1894, p. 76; Civil Code, section 1888. In view of the radical change thus made in the law, the difference of opinion which exists between the majority and the minority of the Court as constituted for the hearing of the cases now in hand is apparently, of but little practical importance save as affecting the result of the present litigation. If another case should arise, the decision of which would depend upon the question as to which we disagree, the

whole matter would still be open to review by a Bench of six Justices. Accordingly we have agreed among ourselves to let the present decision stand upon the head-notes as announced with the foregoing explanation of our reasons for not entering upon a discussion as to what should be the proper construction of the bank charter now under consideration.

Judgment in each case affirmed on conditions.

OPINION OF JUDGE MORRIS,

Filed December 18, 1901, and reported in 112 F. R. 812-816.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT ON MARYLAND. [812]

The Brunswick Terminal Co. and others
vs.
The National Bank of Baltimore.
} In Equity.

MORRIS, District Judge.

This is a bill filed January 14, 1898, by the Brunswick Terminal Company and others, creditors of the Brunswick State Bank, a corporation chartered by the State of Georgia, which failed and was declared insolvent in May, 1893.

The object of the bill is to enforce in behalf of the creditors of said Brunswick State Bank against the National Bank of Baltimore, an alleged stockholder, a statutory liability equal to the par value of the stock in the Brunswick State Bank at one time standing in the name of said National Bank of Baltimore.

This case was heard before on a demurrer to the defendant's answer setting up the plea of limitations under the Maryland Statute. This Court overruled the demurrer, and on the plaintiff's appeal to the Circuit Court of Appeals for the Fourth Circuit that decision was reversed and it was held that * the Georgia Statute, by which suits * 813 to enforce rights accruing under acts of incorporation may be brought within twenty years, was applicable, and that the Maryland statute was not to be applied. *Bruns-*

wick Terminal Co. v. *National Bank of Baltimore*, 99 Fed. Rep., 635, 48 L. R. A. 625. The case now comes on to be heard upon the merits.

The agreed statement of facts contains the following:

"That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of $10,000, endorsed by the copartnership firm of Lloyd & Adams, and received, together with the note, as the collateral security for its payment, 110 shares of the capital stock of said Brunswick State Bank, of the par value of $100 per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State Bank on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity and the defendant, being under obligation to return the stock, the pledge being at end and the pledgor entitled to its return, re-transferred the stock on the books of said Brunswick State Bank by direction of the pledgor and said transfer was fully completed on the books of the said bank on or about the *20th day of October, 1890*, but no notice by publication of the fact of said re-transfer was given by the defendant; that the defendant never had or claimed any interest in said stock save under the pledge aforesaid, but never notified the Brunswick State Bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof. That the indebtedness of said Brunswick Bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State Bank as a stockholder."

The liability of stockholders of the Brunswick State Bank to the creditors thereof is created by section 9 of its charter, found in the laws of Georgia of 1889, (page 522,) which is as follows:

"Section 9. Be it and it is hereby enacted that said corporation shall be responsible to its creditors to the extent of its property and assets: and the stockholders in addition thereto, shall be individually liable, equally and ratably, and not one for another, as sureties to the creditors of such

corporation for all contracts and debts of said corporation, *to the extent of the amount of their stock therein*, at the par value thereof, respectively, *at the time the debt was created*, in addition to the amount invested in such shares."

By this provision the stockholder is made liable only to the extent of his stock at the time the debt was created. It is admitted that the defendant acquired the stock as pledgee on August 25, 1890, and re-transferred it on October 20, 1890, and it is admitted that all the transactions with the Brunswick State Bank from which the debts of the plaintiffs arose commenced after the date when the defendant had re-transferred the stock on the books of the bank. If we look solely to the wording of section 9, it would seem plain, and not to be disputed, that at the time the debts were created the defendant had no stock in the Brunswick State Bank, and it was under no liability whatever. But the plaintiffs invoke section 1496 of the Georgia Code of 1882, which is as follows:

"When a stockholder in any bank or any other corporation is individually liable under the charter and shall transfer his stock he shall be exempt from such liability unless he receives a written notice from a creditor within six months after such transfer of his intention to hold him liable, provided *he shall give notice once a *814 month, for six months, of such transfer immediately thereafter in two newspapers in and nearest the place where such institution shall keep its principal office."

As by the charter of the Brunswick State Bank a stockholder was only liable as surety to creditors to the extent of his stock in the bank at the time the debt was created, and as the defendant at the time the debts of the plaintiffs were created had no stock in the bank and was therefore under no liability, it does not appear that section 1496 of the Georgia Code could have any application to this defendant. This section is applicable to a stockholder who, being individually liable to a creditor or creditors, shall then transfer his stock. The stockholders in the Brunswick State Bank were only liable for debts created while they held their stock, and, as applied to them, this section means that a stockholder who has become individually liable to a creditor by holding stock at the time the creditor's debts were created shall be exempt from such liability, provided he publishes a notice that he has transferred his stock, unless within six

months after the transfer the creditor gives him notice that he intends to holds him liable. This would seem to be the plain meaning and intention of the statute.

As Section 1496 enables a stockholder, who, by the charter, is already under liability to a creditor, to escape that liability by transferring his stock, unless the creditor gives him notice within six months after the transfer, it is sensible and understandable why notice of the transfer should be given; but, as to persons who as yet had no dealing with the bank out of which debts could be created, to require notice to them would not be sensible, and would be a mere arbitrary penalty, without reason,—a thing which is not to be imputed to the legislature if the section is capable of a more reasonable interpretation. If no notice of transfer by advertisement is given by the stockholder, then no notice within six months need be given by the creditor, and both stand upon the rights given by the charter, unaffected by Section 1496 of the Code.

Against this construction the complainants urge a ruling by the Supreme Court of Georgia in the case of *Brobston vs. Downing*, 95 Ga. 505 (1894), 22 S. E. 277. This was a proceeding similar to the present one, to hold stockholders of the insolvent Brunswick State Bank, resident in Georgia, liable to creditors.

The Supreme Court of Georgia filed no opinion, but by a head-note memorandum ruled (one of the three judges doubting) that the liability of a stockholder continued for any debt contracted by the corporation at any time, both before as well as after he had transferred his stock, unless he had given notice of the transfer conformably to Section 1496 of the Code.

This ruling was made four years after the defendant in this case had re-transferred the stock held by it in pledge from August 25th to October 20th, 1890. The same questions, growing out of the liability of the stockholders of the Brunswick State Bank, came before the Supreme Court of Georgia again in *Chatam Bank vs. Brobston*, 99 Ga. 801 (1895), 28 S. E. 790. In that case two of the judges considered themselves bound by the previous ruling in 95 Ga., and 22 S. E., and the third judge recorded his dissent.

815 The court recites that Section 1496 of the Code had been repealed, and that the legislature had in 1894, substituted a provision that the individual liability of a

stockholder should cease upon transfer of his stock, unless the corporation should fail within six months after the transfer, and that in view of this change in the law differences of opinion between the judges were not important, except as affecting the particular litigation before it. The court says (page 804, 99 Ga., page 791, 27 S. E.): "If another case should arise the decision of which would depend upon the question as to which we disagree, the whole matter would still be open to review by a bench of six justices. Accordingly, we have agreed among ourselves to let the present decision stand upon the head-notes as announced, with the foregoing explanation of our reasons for not entering upon a discussion as to what should be the proper construction of the bank charter now under consideration."

The present defendant was not a party to either of the above-mentioned cases; never was within the jurisdiction of the courts of Georgia; never was a real, but only a nominal, shareholder for three months in 1890; and, in view of this explanation by the Supreme Court of Georgia, it would seem that the question of the liability of the defendant in the case now being considered may be fairly treated as still open for independent consideration and examination. *Central R. R. & Banking Co. vs. Wright*, 164 U. S. 327-332.

Section 9 of the Charter of the Brunswick State Bank, creating the individual liability of stockholders, is in substantially the same words as are used in many statutes in many different States, and its meaning may be said to be fixed by common consensus; and, although the highest court of a State may give it a different and peculiar construction, which will be binding upon those whose liability is afterwards incurred, it would seem but just as to those who have made a *bona fide* transfer of their stock before a different interpretation was announced, that their liability should be governed by the generally accepted meaning.

Carroll Co. vs. Smith, 111 U. S. 556, 4 Sup. Ct. 539, 28 L. Ed. 517, was a case with regard to the validity of certain county bonds, which the Constitution and laws of Mississippi provided should not be valid, unless two-thirds of the qualified voters of the county at an election should assent thereto. The Supreme Court of Mississippi construed the words of the Constitution and the laws requiring the assent of two-thirds of the qualified voters to mean

two-thirds of the whole number qualified to vote, and not merely two-thirds of such number as should actually vote at the election, and the Supreme Court of Mississippi for that reason declared the bonds invalid. The Supreme Court of the United States, finding that the *bona fide* holder of the same issue of bonds in the case brought before it was not a party to the case in the State court, and that the rule of construction announced in that case had not been previously established so as to have become recognized as the settled law of the State, did not feel constrained to accept the conclusions of the Supreme Court of Mississippi, for the reason that the generally accepted meaning of similarly worded provisions had been that what was meant was two-thirds of the persons who actually cast their votes.

*816 *Folsom vs. Township* Ninety-Six*, 159 U. S., 625, 626, 627, 16 Sup. Ct. 174, 40 L. Ed. 278;
Pine Grove Tp. vs. Talcott, 19 Wal., 666, 22 L. Ed. 227;
Burgess vs. Seligman, 107 U. S., 20-33, 2 Sup. Ct. 10, 27 L. Ed. 359;
Town of Pana vs. Bowler, 107 U. S., 529-540, 2 Sup. Ct. 704, 27 L. Ed. 424;
Thompson vs. Perrine, 103 U. S., 817, 26 L. Ed. 612;
Butz vs. Muscatine, 8 Wal., 583, 19 L. Ed. 490;
Pease vs. Peck, 18 Howard, 598, 15 L. Ed. 518.

The case now in hand I take to be one in which, for similar reasons, I am not bound to follow the Georgia decision. It surely was not to be supposed by any one who examined the charter of the Brunswick State Bank and Section 1496 of the Code of Georgia that it was intended to inflict a mere penalty upon those who might from time to time hold its stock by arbitrarily making them liable for all transactions during twenty years after they had ceased to be stockholders.

As is said in *Williams vs. Hanna*, 40 Ind., 544, quoted in Thompson's Liability of Stockholders, section 95:

"The creditor, if he looks to the individual liability of stockholders at all, looks to those who are stockholders at the time he lends his credit and to those he should be content to look for the collection of his debt."

See also—1 Cook on Stockholders, section 259;
Matthews vs. Albert, 24 Md. 527-539.

As the defendant did not appear on the stock registry as one of the stockholders of the Brunswick State Bank at the time the complainants gave it credit, no credit could have been given on account of any supposed liability of the defendant as a stockholder.

The unexpected interpretation of the Georgia statute made in 1894 imposing a liability on the defendant growing out of a transfer of stock closed in 1890, in favor of creditors whose debts accrued, as stated in the bill of complaint, during the years 1892 and 1893, has all the elements of injustice which attach to *ex post facto* and retroactive laws. I hold that the defendant is not liable, for the reason that the defendant had no stock at the time when the debts of the complainants were created.

It is also urged that, as the defendant is a National Bank, it had no power under its charter to invest its money in the shares of a corporation.

California Bank vs. Kennedy, 167 U. S. 362, 17 Sup. Ct. 831, 42 L. Ed. 188;
Concord Natl. Bank vs. Hawkins, 174 U. S. 362, 19 Sup. Ct. 739, 43 L Ed. 1007.

And that the creditors of the Brunswick State Bank, from the fact of this want of corporate power, were effected with notice that the shares standing in the name of the National Bank of Baltimore were not its absolute property, but held as a collateral security, the pledgor being the real owner, and that, therefore, the defendant is not estopped from showing the facts which would have been discovered if enquiry had been made.

Robinson vs. Southern National Bank, 180 U. S. 295-309, 21 Sup. Ct. 383, 45 L. Ed. 536;
Baker vs. Old National Bank (*C. C.*), 86 Fed. 1006.

I am, however, so well satisfied upon the ground already stated that the defendant is not liable that I do not consider this other ground of defense urged by the defendant.

I will sign the decree dismissing the bill of complaint.

Supreme Court of the United States.

No. 88.—October Term, 1903.

The Brunswick Terminal Company et al. vs. The National Bank of Baltimore.	On writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[February 23, 1904.]

This was a bill filed January 14, 1898, in the Circuit Court of the United States for the District of Maryland by the Brunswick Terminal Company and others, creditors of the Brunswick State Bank, chartered by the State of Georgia, which failed and was declared insolvent in May, 1893, to enforce, in behalf of its creditors, against the National Bank of Baltimore, a statutory liability equal to the par value of certain shares of stock in the State Bank at one time standing in the name of the Baltimore Bank.

The case was first heard on demurrer to a plea of the Maryland statute of limitations. The demurrer was overruled, the defense sustained, and the bill dismissed. 88 Fed. Rep. 607. On appeal to the Circuit Court of Appeals for the Fourth Circuit, the decree was reversed and the cause remanded for further proceedings. 99 Fed. Rep. 635.

The cause was then heard on the pleadings, and an agreed statement of facts, the parties reserving the right to refer to any pertinent laws or statutes of Georgia, as follows:

"That the Brunswick State Bank was a corporation chartered, organized and existing under the laws of the State of Georgia, and was engaged in the general banking business in that State; that on or about the 30th day of May, 1893, William M. Wiggins and others, alleging themselves to be creditors of said Brunswick State Bank, filed their petition in the Superior Court of Glynn County, Georgia, against said bank, alleging that it was insolvent, and praying for the appointment of a receiver to take possession of its assets, and administer them, and on the 29th day of June following the court decreed that the bank was insolvent and appointed a permanent receiver for the purposes stated; that the State of Georgia and Glynn County were, under the laws of Georgia, preferred creditors, and the assets obtained by the receiver as the assets of the bank were exhausted in the payment of these preferred claims and the costs of litigation, and nothing was left for the payment of other creditors of the bank; that the following persons are creditors of the said Brunswick State Bank in the amounts stated in connection with their names, and were originally parties plaintiff in said cause, or having become such subsequently, that is to say: [Here follow lists of creditors.]

"That the defendant is a national bank, chartered, organized and conducting a business of a bank at the city of Baltimore, in the State of Maryland, under the provisions of the statutes of the United States in relation to national banks and their operation.

"That in the month of August, 1890, the defendant discounted for one Lloyd a promissory note drawn by him and F. E. Cunningham for the sum of ten thousand dollars ($10,000.00), endorsed by the copartnership firm of Lloyd & Adams, and by W. A. Cunningham, and received, together with the note, as the collateral security for its payment, one hundred and ten (110) shares of the capital stock of said Brunswick State Bank of the par value of one hundred dollars ($100.00) per share; that, in order to protect itself as pledgee, the defendant caused this stock to be transferred into its own name on the books of the Brunswick State Bank, on or about the 25th day of August, 1890; that the said note was paid to the defendant at the time of its maturity, and the defendant being under obligation to return the stock, the pledge being at an end and the pledgor entitled to its return, retransferred the stock on the books of said Brunswick State Bank by direction of the pledgor, and the said transfer was fully completed on the books of the said bank on or before the 20th day of October, 1890, but no notice by publication of the fact of said retransfer was given by the defendant; that the defendant never had or claimed any interest in said stock, save under the pledge aforesaid, but never notified the Brunswick State Bank, its stockholders or creditors, that it held said stock otherwise than as the absolute owner thereof.

"That the indebtedness of said Brunswick State Bank to all of the plaintiffs in this cause accrued after the said 20th day of October, 1890, from transactions with said bank commenced after that date, and the plaintiffs had no knowledge in fact that the name of the defendant had appeared upon the books of said Brunswick State Bank as a stockholder.

"It is agreed that the court may draw inferences from any of the foregoing facts to the same extent as if the facts had been proven by means of witnesses."

The Circuit Court rendered a decree dismissing the bill. 112 Fed. Rep. 812.

An appeal to the Circuit Court of Appeals was taken and that court certified to this court certain questions concerning which it desired instructions for the proper decision of the case. After full argument on the merits this court required the whole record and cause to be sent up for consideration.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The Baltimore Bank was a national bank, and was not authorized to permanently invest any portion of its capital in the stock of other corporations, nor did it attempt to do so in this instance. The shares of stock of the Brunswick Bank were merely accepted as collateral to a note discounted by the Baltimore Bank. They stood, it is true, for a few weeks in the name of the Baltimore Bank on the registry of the Brunswick Bank, but they were then retransferred to the pledgor as appeared on the registry, the note having been paid. Complainants became creditors long

after the transaction, and were chargeable with notice so far as the Baltimore Bank was concerned. But notwithstanding the latter bank only held the shares as collateral and had returned the pledge in due course on the payment of the loan, the contention is that the bank is under a statutory liability to these subsequent creditors, to the full amount of the shares it had temporarily held as security.

This additional liability of a stockholder depends on the terms of the statute creating it, and as it is in derogation of the common law the statute cannot be extended beyond the words used.

As to stockholders of the Brunswick Bank, such a liability was imposed by the ninth section of the charter, granted in 1889, which provided "that said corporation shall be responsible to its creditors to the extent of its property and assets, and the stockholders, in addition thereto, shall be individually liable equally and ratably, and not one for another, as sureties to the creditors of such corporation, for all contracts and debts of said corporation, to the extent of the amount of their stock therein, at the par value thereof, respectively, at the time the debt was created in addition to the amount invested in such shares."

Tested by the language of this section, the Baltimore Bank was never under liability to these creditors. For if this national bank could have been regarded as the owner of these shares from August 25 to October 20, 1890, notwithstanding the actual facts and the limitations on its powers, it was not such stockholder, in fact or in appearance, at the time complainants' debts were created. It acquired the stock as pledgee, August 25, 1890, and the note to which it was collateral, having been paid, retransferred it October 20, 1890, the retransfer being regularly entered on the books of the bank. It was after this that the transactions commenced from which the indebtedness to complainants arose, and no element of estoppel was involved.

Nevertheless complainants contend that the Baltimore Bank remained liable as a stockholder because it did not give notice of the retransfer under section 1496 of the Georgia Code of 1882, reading as follows:

"When a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability, unless he receives a written notice from a creditor within six months after such transfer, of his intention to hold him liable; *provided*, he shall give notice once a month, for six months, of such transfer, immediately thereafter, in two newspapers in or nearest the place where such institution shall keep its principal office."

This section was obviously not intended to impose a liability but to exempt from an existing liability. If any debt had been created from August 25 to October 20, and perhaps as to any debt outstanding on August 25, the Baltimore Bank, treating it as a stockholder from August 25 to October 20, might have been held liable because it did not give the

statutory notice, but no such case is presented. On the face of this record it is immaterial whether there were any creditors during the six months after the retransfer to give or to receive notice or whether there was any indebtedness incurred prior to August 25, or during the period from August 25 to October 20, 1890.

We concur in the views of the Circuit Court, as thus expressed by Morris, J.:

"As by the charter of the Brunswick State Bank a stockholder was only liable as surety to creditors to the extent of his stock in the bank at the time the debt was created, and as the defendant at the time the debts of the plaintiffs were created had no stock in the bank, and was therefore under no liability, it does not appear that section 1496 of the Georgia code could have any application to this defendant. This section is applicable to a stockholder who, being individually liable to a creditor or creditors, shall then transfer his stock. The stockholders in the Brunswick State Bank were only liable for debts created while they held their stock, and, as applied to them, this section means that a stockholder, who has become individually liable to a creditor by holding stock at the time the creditor's debts were created shall be exempt from such liability, provided he publishes a notice that he has transferred his stock, unless within six months after the transfer the creditor gives him notice that he intends to hold him liable. This would seem to be the plain meaning and intention of the statute.

"As section 1496 enables a stockholder, who, by the charter, is already under liability to a creditor, to escape that liability by transferring his stock, unless the creditor gives him notice within six months after the transfer, it is sensible and understandable why notice of the transfer should be given; but, as to persons who as yet had no dealings with the bank out of which debts could be created, to require notice to them would not be sensible, and would be a mere arbitrary penalty, without reason,—a thing which is not to be imputed to the legislature if the section is capable of a more reasonable interpretation. If no notice of transfer by advertisement is given by the stockholder, then no notice within six months need be given by the creditor, and both stand upon the rights given by the charter, unaffected by section 1496 of the code."

But it is said that the highest judicial tribunal of Georgia has decided otherwise, and that the Circuit Court and this court are bound to accept its interpretation of these statutory provisions. Without discussing the exceptions to that rule the inquiry in the first instance is as to what has been actually decided by the Supreme Court of Georgia in respect of the construction and application of those provisions in circumstances such as exist in this case. We are referred to the cases of *Brobston* v. *Downing*, *Brobston* v. *Chatham Bank*, 95 Ga. 505, decided May Term 1894; and *Chatham Bank* v. *Brobston*, 99 Ga. 801, decided December Term 1895, which involved the charter of the Brunswick State Bank.

The court delivered no opinion in *Brobston* v. *Downing*, and *Chatham Bank*, but the first headnote by Bleckley, C. J., was in these words: "With

or without a clause in a charter restricting the personal statutory liability of stockholders to the amount of stock at its par value at the time the debt in question was created, the liability exists and continues for any debt incurred by the corporation at any time until the stockholder who claims to be exempt by reason of having sold and transferred his stock before the debt was created has given notice of such sale conformably to section 1496 of the code. Lumpkin, J. concurring *dubitante*."

This does not in terms refer to stock which has been held as collateral and retransferred on payment of the loan.

In the second case there was no opinion of the court, but the following headnotes appear:

"1. The decisions of this court in the cases of *Brobston* v. *Downing*, and *vice versa*, and *Brobston* v. *Chatham Bank*, 95 Ga. 505, upon a review thereof, are affirmed.

"2. Where the charter of a bank imposes on all of its stockholders personal liability to its creditors, such liability attaches as well to those who acquire a complete legal title to stock of the bank by having the same transferred to them as collateral security for debts due by the transferers, as to those who purchase such stock outright.

"3. Under the charter of the Brunswick State Bank, and the general rules of law applicable thereto, a stockholder is individually liable for his *pro rata* part of the corporation debts created before he acquired his shares of stock by transfer, as well as for a like part of those created during his ownership of the shares.

"4. A stockholder in that bank is also liable to the same extent upon debts of the corporation created after he transferred his shares, unless he gave notice of the transfer, as prescribed in section 1496 of the code."

These were followed by four other headnotes, which need not be set forth.

Of the three members of the court, Mr. Justice Lumpkin and Gober, J., filed an explanatory opinion, in which, after giving the ninth section of the Brunswick Bank charter, and section 1496 of the Code of 1882, they stated:

"In the case of *Brobston & Co. et al.* v. *Downing*, and *Same* v. *The Chatham Bank*, 95 Ga. 505, this court in effect decided that a stockholder in this bank was individually liable for his *pro rata* part of the debts of the corporation created before he became a stockholder, as well as for a like proportion of the indebtedness incurred by it while he held his stock. This decision controls the present cases. Upon a review of it, duly allowed, Chief Justice Simmons and Justice Lumpkin are of the opinion that it should be affirmed; and Judge Gober, being thus bound by it, of necessity concurs in the judgments now rendered. He is nevertheless of the opinion that dealing with the cases reported in 95 Ga. *supra*, the court, in so far as it held that a stockholder of this bank could be made liable for any debt created by it before he actually became a stockholder, misconstrued that portion of the bank's charter which is quoted above. If free to do so, he would hold that, under the language just referred to, the individual liability of a stockholder of this corporation is limited to such debts only as were contracted during the time he was an owner of stock

and up to the date when, relatively to such liability, he legally severed his connection with the corporation. We all agree that any such owner, although he may have transferred his stock, would still be bound, under the above-cited section of the code, for whatever liability the charter fixed upon him, unless he gave the notice provided for by that section.

"In 1894, an act was passed by the general assembly which materially modifies the law bearing upon this subject, in that it dispenses with any necessity for a stockholder, upon transferring his stock, to publish notice of the fact in order to be discharged from liability. That act declares that 'whenever a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer.' Act of 1894, p. 76; Civil Code, section 1888.* In view of the radical change thus made in the law, the difference of opinion which exists between the majority and the minority of the court as constituted for the hearing of the cases now in hand is, apparently, of but little practical importance, save as affecting the result of the present litigation. If another case should arise the decision of which would depend upon the question as to which we disagree, the whole matter would still be open to review by a bench of six justices. Accordingly, we have agreed among ourselves to let the present decision stand upon the headnotes as announced, with the foregoing explanation of our reasons for not entering upon a discussion as to what should be the proper construction of the bank charter now under consideration."

As the reference was to the increase of the number of justices from three to six, which followed soon after, we think this explanation indicated that it was contemplated that "the whole matter would be open for review," before the new bench, if another case arose. The power to re-examine would exist, and these remarks were evidently intended to suggest that in the circumstances it might be properly exercised. And this, although the point of disagreement was confined to the question whether liability attached in respect of indebtedness created before the particular stockholders sought to be charged became such.

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*Sections 1, 2 and 3 of the act of 1894 are as follows:

SECTION I. *Be it enacted by the General Assembly of the State of Georgia, etc.*, That from and after the passage of this act, whenever a stockholder in any bank or other corporation is individually liable under the charter, and shall transfer his stock, he shall be exempt from such liability by such transfer, unless such bank or other corporation shall fail within six months from the date of such transfer.

SEC. II. *Be it further enacted*, That the stockholders in whose name the capital stock stands upon the books of such bank or other corporation at the date of its failure shall be primarily liable to respond upon such individual liability; but upon proof made that any of said shareholders at the date of the failure are insolvent, recourse may be had against the person or persons from whom such insolvent shareholder received his stock, if within a period of six months prior to the date of the failure of such bank or other corporation.

SEC. VI. *Be it further enacted*, That all laws and parts of laws in conflict with this law be, and the same are, hereby repealed.

We conclude, therefore, that the questions before us have not been so definitively determined by the State court as to entitle such determination to be adopted and applied in this case. And this conclusion is confirmed by other considerations. The foregoing decisions were rendered in 1894 and 1895, and the Baltimore Bank was not a party to the litigation and was never within the jurisdiction of the Georgia courts. The transaction with this bank occurred in 1890, and fully terminated October 20 of that year.

When it took the collateral shares in its own name, it seems to us that it had the right to assume that it ran no risk of incurring liability by virtue of the terms of the charter of the Brunswick Bank for indebtedness created after, in the ordinary course of business, it ceased to hold the stock, and that it could not reasonably have supposed that section 1496 of the code of Georgia was intended arbitrarily to make all, who might have held the stock of the Brunswick Bank from time to time, liable for every transaction during twenty years (the period of limitations), after they had ceased to be stockholders.

There had been no such ruling in respect of the statutory liability imposed by the charter of the Brunswick Bank on its stockholders, when the loan was made and paid, and the cases cited from the Georgia reports prior to 1894, all of which we have carefully examined, dealt with different provisions and involved different considerations.

The charter of the Brunswick Bank was granted in 1889, at which time section 1496 had been in force for many years, and its application could only extend to the liability imposed by the charter, namely, liability for indebtedness created while the relation of stockholder existed. The words "at the time the debt was created," must be held to have been providently inserted as words of limitation, and cannot be rejected, nor rendered inefficacious by the prior law, which only applied to the actual situation, and did not control it nor purport to do so.

The question is not whether all stockholders remained such if notice were not published, but whether the liability as stockholders, as to subsequent transactions, continued in spite of the termination of that relation, and that question is answered by the explicit terms of the ninth section of the charter.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.